No. 17-1174

In the Supreme Court of the United States

LUIS A. NIEVES AND BRYCE L. WEIGHT
Petitioners,

v.

RUSSELL P. BARTLETT,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX Vol. I of II

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August 20, 2018

Petition for Writ of Certiorari filed February 16, 2018
Petition for Writ of Certiorari granted June 28, 2018

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA (FAIRBANKS)

4:15-cv-00004-SLG

Bartlett v. Nieves, et al.

Date Filed	#	Docket Text
03/02/2015	1	COMPLAINT against Luis A. Nieves, Bryce L. Weight (Filing fee $400/receipt #FBK001125.), filed by Russell P. Bartlett.(PXS, COURT STAFF) (Entered: 03/03/2015)
* * *		
03/10/2015	7	NOTICE *to Court of Filing Exhibits to Complaint* by Russell P. Bartlett re 1 Complaint (Attachments: # 1 Exhibit B, # 2 Exhibit C, # 3 Exhibit D)(Wilson, Zane) (Entered: 03/10/2015)
* * *		
05/04/2015	9	ANSWER to 1 Complaint with Jury Demand by Luis A. Nieves, Bryce L. Weight.(Moore, Stephanie) Modified on 5/6/2015 to reflect error: See 5/6/2015 Docket Annotation. (BJK, COURT STAFF). (Entered: 05/04/2015)
* * *		

10/16/2015	29	AMENDED COMPLAINT against All Defendants, filed by Russell P. Bartlett.(Wilson, Zane) (Entered: 10/16/2015)
10/29/2015	30	ANSWER to 29 Amended Complaint by All Defendants.(Moore, Stephanie) (Entered: 10/29/2015)
		* * *
11/10/2015	32	RESPONSE in Opposition re 31 MOTION to Quash *Deposition of Uninvolved Witness* filed by Russell P. Bartlett. (Attachments: # 1 Exhibit A-F, # 2 Exhibit, # 3 Proposed Order)(Wilson, Zane) (Entered: 11/10/2015)
		* * *
01/05/2016	38	MOTION for Partial Summary Judgment by Russell P. Bartlett. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Proposed Order)(Wilson, Zane) Modified on 1/6/2016 to reflect error: See 1/5/2016 Docket Annotation. (BJK, COURT STAFF). (Entered: 01/05/2016)
01/05/2016	39	MEMORANDUM *IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT* by Russell P. Bartlett 38 MOTION for Partial Summary Judgment filed by Russell P. Bartlett. (Wilson, Zane) (Entered: 01/05/2016)

	* * *	
01/28/2016	44	RESPONSE in Opposition re 38 MOTION for Partial Summary Judgment filed by Luis A. Nieves, Bryce L. Weight. (Attachments: # 1 Supplement Table of Contents, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit)(Moore, Stephanie) (Entered: 01/28/2016)
	* * *	
01/29/2016	46	MOTION for Summary Judgment by Luis A. Nieves, Bryce L. Weight. (Attachments: # 1 Proposed Order)(Moore, Stephanie) (Entered: 01/29/2016)
01/29/2016	47	MEMORANDUM *in Support of Motion for Summary Judgment* by Luis A. Nieves, Bryce L. Weight 46 MOTION for Summary Judgment filed by Luis A. Nieves, Bryce L. Weight. (Attachments: # 1 Supplement, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit)(Moore, Stephanie) (Entered: 01/29/2016)

	* * *	
02/04/2016	49	REPLY to Response to Motion re 38 MOTION for Partial Summary Judgment filed by Russell P. Bartlett. (Attachments: # 1 Exhibit A)(Wilson, Zane) (Entered: 02/04/2016)
	* * *	
03/15/2016	57	RESPONSE in Opposition re 46 MOTION for Summary Judgment filed by Russell P. Bartlett. (Attachments: # 1 Appendix, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit, # 17 Exhibit, # 18 Exhibit, # 19 Exhibit, # 20 Exhibit, # 21 Proposed Order)(Wilson, Zane) (Entered: 03/15/2016)
	* * *	
03/18/2016	60	MOTION for Summary Judgment *REGARDING THERE BEING NO PROBABLE CAUSE TO CHARGE MR. BARTLETT WITH RESISTING ARREST* by Russell P. Bartlett. (Attachments: # 1 Proposed Order)(Wilson, Zane) (Entered: 03/18/2016)

	* * *	
03/31/2016	62	REPLY to Response to Motion re 46 MOTION for Summary Judgment filed by Luis A. Nieves, Bryce L. Weight. (Attachments: # 1 Supplement, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit)(Moore, Stephanie) (Entered: 03/31/2016)
	* * *	
04/08/2016	65	RESPONSE in Opposition re 60 MOTION for Summary Judgment *REGARDING THERE BEING NO PROBABLE CAUSE TO CHARGE MR. BARTLETT WITH RESISTING ARREST* filed by Luis A. Nieves, Bryce L. Weight. (Moore, Stephanie) (Entered: 04/08/2016)
	* * *	
04/15/2016	67	REPLY to Response to Motion re 60 MOTION for Summary Judgment *REGARDING THERE BEING NO PROBABLE CAUSE TO CHARGE MR. BARTLETT WITH RESISTING ARREST* filed by Russell P. Bartlett. (Wilson, Zane) (Entered: 04/15/2016)

	* * *	
07/07/2016	73	**ORDER:** re All Pending Motions: 38 Motion for Partial Summary Judgment; 46 Motion for Summary Judgment; and 60 Motion for Summary Judgment. Signed by Judge Sharon L. Gleason on 07/07/2016. (AEM, CHAMBERS STAFF) (Entered: 07/07/2016)
07/13/2016	74	**JUDGMENT** in favor of Luis A. Nieves, Bryce L. Weight, against Russell P. Bartlett; Defendants, Luis A. Nieves and Bryce L. Weight to recover costs from plaintiff, Russell P. Bartlett. Signed by Judge Sharon L. Gleason on 7/13/2016. (SDW, COURT STAFF) (Additional attachment(s) added on 8/5/2016: # 1 Judgment with costs added. NEF Redistibuted.) (CME, COURT STAFF). (Entered: 07/13/2016)
	* * *	
08/05/2016	81	NOTICE OF APPEAL by Russell P. Bartlett. Filing fee $ 505. (Attachments: # 1 Exhibit)(Wilson, Zane) (Entered: 08/05/2016)
	* * *	

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

16-35631

Russell Bartlett v. Luis Nieves, et al.

Date Filed	#	Docket Text
		* * *
11/14/2016	7	Submitted (ECF) Opening Brief for review. Submitted by Appellant Russell P. Bartlett. Date of service: 11/14/2016. [10195414] [16-35631] (Wilson, Zane) [Entered: 11/14/2016 12:47 PM]
11/14/2016	8	Submitted (ECF) excerpts of record. Submitted by Appellant Russell P. Bartlett. Date of service: 11/14/2016. [10195426] [16-35631] (Wilson, Zane) [Entered: 11/14/2016 12:53 PM]
		* * *
02/02/2017	22	Submitted (ECF) Answering Brief for review. Submitted by Appellees Luis A. Nieves and Bryce L. Weight. Date of service: 02/02/2017. [10300685] [16-35631]--[COURT UPDATE: Attached corrected brief. 02/08/2017 by SLM] (Botstein, Ruth) [Entered: 02/02/2017 07:02 PM]

02/02/2017	23	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees Luis A. Nieves and Bryce L. Weight. Date of service: 02/02/2017. [10300686] [16-35631] (Botstein, Ruth) [Entered: 02/02/2017 07:03 PM]
* * *		
02/16/2017	30	Submitted (ECF) Reply Brief for review. Submitted by Appellant Russell P. Bartlett. Date of service: 02/16/2017. [10323234] [16-35631]--[COURT UPDATE: Attached corrected brief. 02/22/2017 by SLM] (Wilson, Zane) [Entered: 02/16/2017 03:35 PM]
* * *		
10/06/2017	41	ARGUED AND SUBMITTED TO KIM MCLANE WARDLAW, RICHARD R. CLIFTON and JOHN B. OWENS. [10608910] (SB) [Entered: 10/06/2017 10:20 AM]
10/06/2017	42	Filed Audio recording of oral argument. **Note:** Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/ [10610045] (SB) [Entered: 10/06/2017 04:53 PM]

10/20/2017	43	FILED MEMORANDUM DISPOSITION (KIM MCLANE WARDLAW, RICHARD R. CLIFTON and JOHN B. OWENS) Each party to bear its own costs. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. FILED AND ENTERED JUDGMENT. [10625157] (MM) [Entered: 10/20/2017 09:41 AM]
11/03/2017	44	Filed (ECF) Appellant Russell P. Bartlett petition for panel rehearing (from 10/20/2017 memorandum). Date of service: 11/03/2017. [10643609] [16-35631] (Wilson, Zane) [Entered: 11/03/2017 04:56 PM]
11/21/2017	45	Filed order (KIM MCLANE WARDLAW, RICHARD R. CLIFTON and JOHN B. OWENS): Appellant's Petition for Panel Rehearing (Docket No. [44]) is DENIED. [10663608] (AF) [Entered: 11/21/2017 03:58 PM]
* * *		

Exhibit B

Alaska Department of Public Safety

Incident Report

[SEAL]

Incident: AK14025280

Incident Type:

Disorderly Conduct [90C]

Incident time:

04/13/2014 01:57 - 04/13/2014 02:42

Reported time:

04/13/2014 01:57

Incident location:

210 RICHARDSON HIGHWAY, PAXSON, Unorganized Borough AK USA 99737 (Beat/zone: HHHH)

Incident status:

Closed by arrest

Summary:

On 4/13/14 at approximately 0150 hours, Alaska State Troopers contacted a large party in the Artic Man event area to investigate minor consuming alcohol. At approximately 0157 hours Russell P. Bartlett attempted to stop Troopers from investigating and created a hazardous

condition. When being placed under arrest for disorderly conduct Russell resisted with force. Russell was charged with DC and resisting arrest.

Incident Activities/Offenses

- Disorderly Conduct - AS11.61.110(a)(6) - Recklessly Creates Hazardous Condition For Others with No Legal Justification or Excuse
- Resisting Arrest - AS11.56.700(a)(3) - Knowingly Resists Arrest by Any Means that Creates a Substantial Risk of Physical Injury to Any Person

Involved Persons

SADLER, JERRY LEE

Classification: Interview; Owner

SID: [redacted]

Gender: Male

Height: 6'2"

Race: White

DL: [redacted]

DOB: [redacted]

Weight: 190lb

Hair Color: Brown

Build:

Eye Color: Blue

Address: [redacted], Fairbanks North Star Borough AK USA 99709 (Beat/zone: UJBA)

E-mail:

BARTLETT, RUSSELL PAUL

Classification: Arrested; Charged

SID: AK6250956

Gender: Male

Height: 5'9"

Race: White

DL: 6250956 AK

DOB: [redacted]/1969

Weight: 235lb

Hair Color: Brown

Build:

Eye Color: Green

Address: 4040 OLD WOOD ROAD, ESTER, Fairbanks North Star Borough AK USA 99709 (Beat/zone: HJBF)

E-mail:

Telephone: (Cellular phone) (907) 347-1421

Involved Addresses

- 210 RICHARDSON HIGHWAY / Incident location / PAXSON, Alaska, USA 99737 (Beat/zone: HHHH)

Related Incidents

- Same event / AK14017152 / Miscellaneous / 03/11/2014 15:57

Involved Officers

- Assisting officer / #WSK0KIRKSEY, WALLACE S / Assisting officer
- Assisting officer / #RLM2MAU, RYAN L / Assisting officer
- Assisting unit / #GLR0RICH, GABRIEL L / Assisting unit
- Assisting officer / #NCH0HAYES, NICOLAS C / Assisting officer
- Assisting officer / #PND0DUCE, P NATHAN / Assisting officer
- Assisting officer / #JLC0CARSON, JESSIE L / Assisting officer
- Assisting officer / #GDY0YOUNG, GORDON D / Assisting officer
- Reporting unit / #PALTAST PALMER BHP / Reporting unit
- Assisting officer / #JDP2PUGH, JASON D / Assisting officer
- Assisting officer / #LAN1NIEVES, LUIS A / Assisting officer

- Reporting officer / #BLW1WEIGHT, BRYCE L / Reporting officer
- Call taker / #OPSFAST FAIRBANKS DISPATCH / Call taker

Reports

Arrest report

Subject:

BARTLETT, RUSSELL PAUL / Arrested; Charged / DOB: [redacted]/1969 (44) Gender: Male (4040 OLD WOOD ROAD, ESTER, Fairbanks North Star Borough AK USA 99709 (Beat/zone: HJBF)) DL:AK:6250956

Author:

#BLW1 WEIGHT, B.

Report time:

04/13/2014 01:57

Charges:

(1) AS11.61.110(a)(6) Recklessly Creates Hazardous Condition For Others with No Legal Justification or Excuse (Not Applicable)

(2) AS11.56.700(a)(3) Knowingly Resists Arrest by Any Means that Creates a Substantial Risk of Physical Injury to Any Person (Not Applicable)

General report

Author: #BLW1 WEIGHT, B.

Report time: 04/13/2014 04:16

Narrative:

On 4/13/14 at approximately 0125 hours I contacted a large party at the Artic Man event. From the patrol vehicle I observed several people in the area who appeared to be minors. I also observed the majority of the people at the party had alcoholic drinks in their hands. I contacted the party to investigate minors consuming alcohol. As I approached, several people departed the area.

I contacted 3 male juveniles who had been consuming alcohol. I referred them to Trp. Miner for issuance of minor consuming alcohol citations. I contacted a fourth male juvenile in the area and asked him to step to the side of the party so I could talk with him. The juvenile complied, and was very cooperative. As I was investigating, **Russell P. Bartlett AK6250956** approached me in an aggressive manner. He walked straight towards me and had a look of anger on his face. Russell put his arm between me and the juvenile and informed me that I could not speak with the juvenile. He told me that I had no business talking with the juvenile and I needed to leave him alone. I attempted to explain to Russell what I was doing and why I was speaking with the 16 year old (investigating minors consuming alcohol at the party). Russell continued to get in between me and the juvenile, and continued to be hostile and aggressive. I smelled the

strong odor of alcoholic beverage coming from Russell's breath and Russell was slurring his speech.

Russell stepped forward to where his chest was almost touching mine, and his face very close to mine. I took this action by Russell to be combative in nature. I placed both hands on Russell's chest and pushed him away from me. Russell came at me again. Sgt. Nieves and I attempted to gain control of Russell. Sgt. Nieves informed Russell he was under arrest and ordered Russell to the ground. Russell did not comply. I performed a leg sweep on Russell and Russell fell forward, catching himself with his hands. Russell continued to resist and struggle as Sgt. Nieves and I attempted to gain control of his arms and place him in hand cuffs. Russell attempted to 'head-butt' Sgt. Nieves, but was unsuccessful. Sgt. Nieves verbally threatened the use of a taser, and Russell went prone and placed his arms behind his back. Russell was placed into handcuffs. Russell was transported to the Artic Man holding tent on the charges of disorderly conduct and resisting arrest.

Per the Glennallen bail schedule, bail was set at $500.

Supplementary report

Author: #LAN1 NIEVES, L.

Report time:

Remarks:

Narrative:

On 4/13/14 at approximately 0135 hours, I arrived at a large party located at the end of the "runway" during

the Arctic Man event, to assist Trooper Miner and Trooper Weight with an investigation involving minors consuming alcohol. I contacted the owner of the camp site, Jerry Lee Sadler [redacted], in front of his RV. Also present was Russell P. Bartlett **AK6250956**. Bartlett began to shout to Sadler and the occupants of the RV that they did not have to speak with me or allow me in the RV. After speaking with Sadler, advising him to secure his alcohol from random juveniles showing up on his camp site, I spoke with Bartlett, offering to explain why Troopers were present. Bartlett advised me he did not want to speak with me and then told me to leave the camp site. I departed the campsite, but remained nearby to assist Trooper Miner and Trooper Weight with crowd control.

I observed Bartlett walking towards Trooper Weight, who was speaking with a juvenile near the campsite. Bartlett began to shout at Trooper Weight that he was not allowed to speak with the juvenile. Trooper Weight explained that he was conducting an investigation involving minors consuming alcohol. Bartlett got within an arm's length of Trooper Weight, shouting that he was not allowed to speak with the juvenile. Bartlett began to close Trooper Weight, resulting in Trooper Weight pushing him away. I immediately grabbed a hold of Bartlett and advised him he was under arrest for disorderly conduct. Bartlett clenched his right fist as I grabbed his left arm, shouting no. I advised him again that he was under arrest, as he pulled away from me, as he swung his right fist towards me. Trooper Weight assisted me in getting Bartlett into a prone position, as he continued to fight with us until Trooper Miner arrived and I threatened to deploy the Taser. Bartlett was subsequently

handcuffed and transported to the Arctic Man command post by Trooper Weight on the charges of Disorderly Conduct and Resisting Arrest. Sadler approached me in front of his camp site and asked who Bartlett was. Sadler stated that he did not know Bartlett and had not invited him to his camp site.

Printed: 04/25/2014 15:44 by BLW1

PSTD800P TERMID: X4QF

CRIMINAL CONVICTIONS 04/18/14 11:10:48.9

PERSON NAME: RUSSELL PAUL BARTLETT

UPDATED: AST NUM:

APSIN ID: 6250956

FBI NUM:

CRIMINAL HISTORIES MAY EXIST IN:

FP CLASS:

CONV COURT	CONV DATE	CONVICTING CHARGE
DFA	01/22/93	DWI - ALCOHOL

COURT DOCKET	POS FEL ID	ATN
M9203323	N	100208484

ARREST INFORMATION EXISTS FOR THE
PREVIOUS 120 DAYS
USE PFS TO VIEW

PF2 MULT PERSON PF8 FULL HIST *AT END*

Exhibit C

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Glennallen

COMPLAINT

Related to AST incident(s): AK14025280

CASE NO. 3GL-14-25-CR

[Filed April 14, 2014]

State of Alaska, Plaintiff, vs. Bartlett, Russell Paul Defendant 1 of 1.		
Date of Birth: [redacted]/1969	ASPIN: 6250956	
Operator License Number: 6250956 State: ☒ AK ☐ CDL? ☐ Yes ☒ No		
Mailing Address: PO BOX 408		
City: Ester	State: AK	ZIP: 99725

STATEMENT OF CHARGES:

Defendant(s)	ATN	CTN	Date Offense	Offense Location
Bartlett, Russell Paul	11257 6059	1	4/13/14	Arctic Man

Statute/Reg/ Ordinance (from UOCT)	Offense Title	Modifier
AS 11.61.110(a)	**DISORDERLY CONDUCT**	□ Attempt - AS 11.31.100 □ Solicitation - AS 11.31.110 □ Conspiracy - AS 11.31.120 □ Gang-Related - AS 12.55.137
Class A Misdemeanor		
DV Related: □ Yes ☒ No	□ Motor Vehicle Used in Commission of Offense - AS 28.15.181(a)	
If Traffic Offense: □ Highway Work Zone □ Traffic Safety Corridor Commercial Vehicle: □ Yes □ No If Yes, Type: □ >26,000 lbs. □ >15 passengers □ Hazardous Material		

THE COMPLAINANT STATES that on or about the 13th day of April, 2014, at or near Arctic Man, in the THIRD Judicial District, State of Alaska, the above named Defendant did unlawfully commit the offense of Disorderly Conduct, when

□ with intent to disturb the peace and privacy of another not physically on the same premises or with reckless disregard that his/her conduct had that effect after being informed that it was having that effect, he/she made unreasonably loud noise;

AS 11.61.110(a)(1)

☐ in a public or private place of another without consent, and with intent to disturb the peace and privacy of another or with reckless disregard that his/her conduct had that effect after being informed that was having that effect, he/she made unreasonably loud noise;

AS 11.61.110(a)(2)

☐ In a public place, when a crime had occurred, he/she refused to comply with a lawful order of a peace officer to disperse;

AS 11.61.110(a)(3)

☐ in a private place, he/she refused to comply with an order of a peace officer to leave premises in which he/she had neither a right of possession nor express invitation to remain of a person having a right of possession;

AS 11.61.110(a)(4)

☐ In a public or private place, he/she challenges another to fight or engage in fighting other than in self-defense;

AS 11.61.110(a)(5)

☒ he/she recklessly created a hazardous condition for others by an act which has no legal justification or excuse;

AS 11.61.110(a)(6)

☐ he/she intentionally exposed his/her buttock or anus to another with reckless disregard for the offensive or insulting effect the act may have on that person.

AS 11.61.110(a)(7)

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

I certify under penalty of perjury that the foregoing is true.

4/13/2014
Date

/s/
Complainant's Signature

Trooper B. Weight
Type or Print Name and Title

#1 Criminal Complaint - 1 count - Perjury Cert. (10/13)
Criminal Rule 3

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Glennallen

COMPLAINT

Related to AST incident(s): AK14025280

CASE NO. 3GL-14-25-CR

[Filed April 14, 2014]

State of Alaska, Plaintiff, vs. Bartlett, Russell Paul Defendant 1 of 1.		
Date of Birth: [redacted]/1969	ASPIN: 6250956	
Operator License Number: 6250956 State: ☒ AK ☐ CDL? ☐ Yes ☒ No		
Mailing Address: PO BOX 408		
City: Ester	State: AK	ZIP: 99725

STATEMENT OF CHARGES:

Defendant(s)	ATN	CTN	Date Offense	Offense Location
Bartlett, Russell Paul	11257 6059	2	4/13/14	Arctic Man
Statute/Reg/ Ordinance (from UOCT)	Offense Title			Modifier

AS 11.56.700(a)	RESISTING OR INTERFERING WITH ARREST	☐ Attempt - AS 11.31.100 ☐ Solicitation - AS 11.31.110 ☐ Conspiracy - AS 11.31.120 ☐ Gang-Related - AS 12.55.137
Class A Misdemeanor		
DV Related: ☐ Yes ☒ No	☐ Motor Vehicle Used in Commission of Offense - AS 28.15.181(a)	
If Traffic Offense: ☐ Highway Work Zone ☐ Traffic Safety Corridor Commercial Vehicle: ☐ Yes ☐ No If Yes, Type: ☐ >26,000 lbs. ☐ >15 passengers ☐ Hazardous Material		

THE COMPLAINANT STATES that on or about the 13th day of April, 2014, at or near Arctic Man, in the THIRD Judicial District, State of Alaska, the above named Defendant did unlawfully commit the offense of Resisting or Interfering with Arrest, when he/she, knowing that a peace officer was making an arrest, with the intent of preventing the officer from making the arrest, he/she resisted personal arrest or interfered with the arrest of another by

☒ force; AS 11.56.700(a)(1)

☐ committing any degree of criminal mischief; AS 11.56.700(a)(2)

□ any means that created a substantial risk of physical injury to any person.

AS 11.56.700(a)(3)

Probable Cause Statement: See Affidavit.

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

I certify under penalty of perjury that the foregoing is true.

4/13/2014
Date

/s/
Complainant's Signature

Trooper B. Weight
Type or Print Name and Title

#1 Criminal Complaint - 1 count - Perjury Cert. (10/13)
Criminal Rule 3

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Glennallen

AFFIDAVIT by Police Officer

In Support of Complaint

Related to AST incident(s): AK14025280

CASE NO. 3GL-14-25 CR

[Filed April 14, 2014]

State of Alaska, Plaintiff, vs. Bartlett, Russell Paul Defendant 1 of 1.		
Date of Birth: [redacted]/1969	ASPIN: 6250956	
Operator License Number: 6250956 State: ☒ AK ☐ CDL? ☐ Yes ☒ No		
Mailing Address: PO BOX 408		
City: Ester	State: AK	ZIP: 99725

Defendant(s)	ATN	CTN(s)	Date Offense	Offense Location
Bartlett, Russell Paul	11257 6059	1-2	4/13/14	Arctic Man

I, Trooper Bryce Weight attest to the following and state:

On 4/13/14 at approximately 0125 hours I contacted a large party at the Artic Man event. From the patrol vehicle I observed several people in the area who appeared to be minors. I also observed the majority of the people at the party had alcoholic drinks in their hands. I contacted the party to investigate minors consuming alcohol. As I approached, several people departed the area.

I contacted 3 male juveniles who had been consuming alcohol. I referred them to Trp. Miner for issuance of minor consuming alcohol citations. I contacted a fourth male juvenile in the area and asked him to step to the side of the party so I could talk with him. The juvenile complied, and was very cooperative. As I was investigating, **Russell P. Bartlett AK6250956** approached me in an aggressive manner. He walked straight towards me and had a look of anger on his face. Russell put his arm between me and the juvenile and informed me that I could not speak with the juvenile. He told me that I had no business talking with the juvenile and I needed to leave him alone. I attempted to explain to Russell what I was doing and why I was speaking with the 16 year old (investigating minors consuming alcohol at the party). Russell continued to get in between me and the juvenile, and continued to be hostile and aggressive. I smelled the strong odor of alcoholic beverage coming from Russell's breath and Russell was slurring his speech.

Russell stepped forward to where his chest was almost touching mine, and his face very close to mine. I took this action by Russell to be combative in nature. I

placed both hands on Russell's chest and pushed him away from me. Russell came at me again. Sgt. Nieves and I attempted to gain control of Russell. Sgt. Nieves informed Russell he was under arrest and ordered Russell to the ground. Russell did not comply. I performed a leg sweep on Russell and Russell fell forward, catching himself with his hands. Russell continued to resist and struggle as Sgt. Nieves and I attempted to gain control of his arms and place him in hand cuffs. Russell attempted to 'head-butt' Sgt. Nieves, but was unsuccessful. Sgt. Nieves verbally threatened the use of a taser, and Russell went prone and placed his arms behind his back. Russell was placed into handcuffs. Russell was transported to the Artic Man holding tent on the charges of disorderly conduct and resisting arrest.

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of court proceeding and disclosure of the information was ordered by the court.

4/13/2014
Date

/s/
Complainant's Signature

Trp. B Weight
Type or Print Name and Title

Subscribed and sworn to or affirmed before me at Paxson, Alaska, on 4/13/14.

(SEAL) **/s/Heather Olalde**
Notary Public or other person authorized to administer oaths.
My commission expires: w/office

NVOL Criminal Complaint (10/2013)
Criminal Rule 3

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA AT FAIRBANKS

Case No. 4:15-cv-4 SLG

[Filed October 16, 2015]

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants,	)

FIRST AMENDED COMPLAINT

Russell P. Bartlett (Bartlett) for his cause of action against the defendants hereby complains and alleges as follows:

I. GENERAL ALLEGATIONS

1. On March 13, 2014, Bartlett was attending the Arctic Man event, specifically a lawful gathering in the parking lot of said event.

2. Bartlett was accompanied by a minor who was attending and observing the event, but was not drinking any alcohol.

3. Bartlett observed the minor come into contact with Bryce L. Weight (Weight) who was acting in his official capacity as an Alaska State Trooper.

4. In a non-confrontational manner Bartlett advised Weight of his belief that Weight should not be interviewing the minor without the minor's lawful guardian present.

5. Without provocation and without cause Weight proceeded to assault Bartlett by shoving him in the chest and attacking and arresting him.

6. Luis A. Nieves (Nieves), also acting in his capacity as an Alaska State Trooper, also proceeded to assault and arrest Bartlett for no lawful reason.

7. The events related to Bartlett's arrest were witnessed and videotaped by a news crew[1] and the videotape of Bartlett's arrest was subsequently broadcast on the Anchorage news.

8. Nieves and Weight knew that they had no lawful basis to assault and arrest Bartlett so they drafted up a fabricated police report[2] falsely claiming that Bartlett had placed them in fear of an assault, claiming that Bartlett came at Weight after being shoved away from him, that Bartlett tried to head butt Nieves and swung his fist at Nieves.

9. The above allegations by Weight and Nieves are demonstrably false and inaccurate.

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[1] Exhibit A.

[2] Exhibit B.

10. The conduct of Nieves and Weight was and is in violation of standard trooper policy regarding when it is appropriate to initiate physical contact with an alleged defendant. Nieves and Weight further violated trooper policy by failing to audio record the events at issue and/or have destroyed the audio tape of the events.

11. Nieves and Weight knowingly and intentionally failed to gather and preserve the evidence documenting their encounter with Bartlett. Bartlett fortuitously and coincidentally discovered the video of his encounter with Nieves and Weight when it was posted on YouTube.

12. Weight and Nieves pressed false charges against Bartlett[3] and Bartlett incurred costs and attorney fees in defending against those false charges until the charges were finally dismissed by the District Attorney.[4]

13. The actions of the defendants as described above were not motivated by a purpose to serve the State but were willful, intentional, reckless, and/or made with gross negligence and malice against Bartlett and were initially motivated by an effort to "grand stand" before the TV audience.

14. As a result of the defendants actions Bartlett was incarcerated, searched, subjected to public ridicule, and had to defend himself against false charges, which

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[3] Exhibit C.

[4] Exhibit D.

charges were ultimately and belatedly dismissed by the District Attorney.

15. The actions of the defendants constitute a false arrest and imprisonment of Bartlett when the defendants knew or should have known that said arrest and incarceration was absolutely without merit.

16. The defendants intended and caused false criminal charges to be filed and pursued against Bartlett. Said charges have been dismissed because Bartlett was not guilty of the charges the defendants advanced against him.

17. The defendants intentionally assaulted Bartlett without cause or justification.

18. The defendants' actions were intended to and did in fact cause Bartlett to be subjected to false imprisonment.

19. The actions of the defendants were initially motivated by their desire to grandstand before the TV camera and to quash Bartlett's lawful exercise of his right of free speech. The actions of the defendants were intended to and did cause Bartlett to be cast in a false light, subjecting him to public disdain and ridicule.

20. The actions of the defendants were intentional and reckless to the rights of Bartlett. Further, the actions of the defendants were not intended or designed to in any way benefit their employer, the State of Alaska, and were malicious and corrupt supporting an award of punitive damages against the defendants.

COUNT I
VIOLATION OF 42 U.S.C. § 1983

21. Bartlett repeats all prior allegations as fully set forth herein.

22. No reasonable police officer would have believed that the acts undertaken by the defendants were appropriate under the facts of this case.

23. Acting under color of law, the defendants violated Bartlett's federal and state constitutional rights as referenced above to include his right to be free from unlawful assault by a police officer, to be free from a malicious criminal prosecution, to not be falsely incarcerated, unreasonable search and seizure, freedom of speech, equal protection of the law and his right to due process.

24. As a result of the defendants' actions, Bartlett has suffered damages to include – mental distress, damage to reputation, attorney fees, loss of freedom and violation of constitutional rights.

25. The defendants' actions violated 42 U.S.C § 1983

COUNT II
VIOLATION OF 42 U.S.C. § 1985

26. Bartlett repeats all prior allegations as fully set forth herein.

27. The defendants conspired to deprive Bartlett of the due course of justice with intent to deny him equal protection of the law and/or to injure him for attempting to protect the lawful/constitutional rights of another.

28. The defendants' actions violated 42 U.S.C § 1985.

WHEREFORE Bartlett prays for the following relief:

1. For judgment to enter against the defendants, in their personal capacity, in an amount reasonably believed to be in excess of $100,000 the precise amount to be proven at trial.

2. For an award of actual costs and attorney fees and interest to the fullest extent allowed under the law.

3. For such other and further relief as the court deems fair and equitable under the circumstances.

DATED this 30th day of July 2015.

/s/ Zane D. Wilson
714 Fourth Avenue, Suite 200
Fairbanks, Ak 99701
Phone: (907) 452-1855
Fax: (907) 452-8154
Email: zane@alaskalaw.com
Attorney Bar #9111108

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

[Filed October 29, 2015]

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants,	)
	)

ANSWER TO FIRST AMENDED COMPLAINT

Defendants Luis Nieves and Bryce Weight answer Bartlett's First Amended Complaint as follows:

I. General Allegations

1. Defendants admit that Bartlett was attending the Arctic Man event but deny that the date was March 13, 2014. Defendants admit that on April 13, 2014, Bartlett was present at a large private party.

2. Defendants deny that Bartlett "was accompanied by a minor who was attending and observing the event" when he had initial contact with Sgt. Nieves and when he confronted Trooper Weight.

3. Defendants admit that Trooper Bryce Weight was acting in his official capacity as an Alaska State Trooper on April 13, 2014, at approximately 1:30 am, when Bartlett aggressively confronted Trooper Weight while he was speaking with a minor. Immediately before this, Bartlett had aggressively confronted Sgt. Nieves. Bartlett's aggressive behavior appeared to be escalating when he confronted Trooper Weight.

4. Defendants deny that Bartlett was non-confrontational. Bartlett aggressively interjected and interfered with a lawful investigation. Bartlett's hostile demeanor, actions, and demands could cause a reasonable law enforcement officer to fear an imminent assault. Bartlett had no apparent custodial authority or responsibility for the minor with whom Trooper Weight was speaking in the course of his investigation.

5. Denied.

6. Admitted that Trooper Weight was acting in his capacity as an Alaska State Trooper; denied that he had no lawful reasons for his actions.

7. Admitted that some events related to Bartlett's arrest were witnessed and videotaped by John Thain of Channel 11 News; denied that it was known at the time of Bartlett's arrest what Mr. Thain did or did not capture on video, nor would Mr. Thain have provided the video at the scene. The video was publicly available on the internet and was provided during the course of the criminal prosecution.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

Count I
Violation of 42 U.S.C. § 1983

21. Defendants restate their responses to paragraphs 1 through 20 of the Complaint.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

Count II
Violation of 42 U.S.C. § 1985

26. Defendants restate their responses to paragraphs 1 – 25 of the Complaint.

27. Denied.

28. Denied.

In defense of plaintiff's claims, defendants state the following:

1. Plaintiff fails to state a claim upon which relief may be granted.

2. To the extent plaintiff is suing defendants in their official capacities for Section 1983 violations, this Court lacks jurisdiction for such claims.

3. Venue should be transferred to Anchorage.

4. Some or all of plaintiff's claims may be barred by the Separation of Powers Doctrine.

5. Defendants are absolutely immune for any acts or omissions; and if they are not absolutely immune, they have qualified immunity. All other immunities are reserved.

6. The criminal action against Bartlett was dismissed based solely on prosecutorial discretion and limited resources - - not because the criminal action lacked merit.

7. Investigation and protection of minors consuming alcohol are important public safety functions.

8. The video of this event demonstrates that plaintiff's claims are meritless and that plaintiff was engaged in disorderly and other unlawful conduct.

Defendants are entitled to attorney's fees and costs incurred in defending this action. Therefore,

defendants respectfully request that the Court dismiss the Complaint, enter judgment in their favor, and award them costs and fees and any other appropriate relief.

DATED: October 29, 2015.

CRAIG W. RICHARDS
ATTORNEY GENERAL

By: /s/Stephanie Galbraith Moore
Stephanie Galbraith Moore
Senior Assistant Attorney General
Alaska Bar No. 8911063
Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, AK 99501
Phone: (907) 269-5190
Facsimile: (907) 258-0760
Email: stephanie.galbraith@alaska.gov
Attorney for Defendants

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT FAIRBANKS

Case No. 4:15-cv-4 SLG

[Filed November 10, 2015]

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants,	)

OPPOSITION TO MOTION TO QUASH DEPOSITION OF "UNINVOLVED WITNESS" (SGT. MIKE INGRAM)

I. INTRODUCTION

Russell Bartlett (Bartlett) has noticed the deposition of State Trooper Sgt. Mike Ingram (Ingram) to determine what policies, procedures or training he relied upon to support his seizure of a journalist's video of an individual being arrested. This information is relevant to Bartlett's case as Bartlett was video and audio taped by a journalist while he was being arrested but the officers involved in that arrest did not request

or obtain a warrant for the seizure of that evidence - even though one of the arresting officers, Trooper Nieves, participated in the gathering of the video/audio by wearing a wireless mic. Bartlett has attempted to obtain this evidence by questioning of Troopers Nieves and Weight, to no avail. To the extent Ingram relied upon training, policies, or procedures of the Alaska State Troopers to support his seizure, these policies, training or procedures would support Bartlett's argument that Troopers Nieves and Weight failed to seize his video (or even report that it existed) to conceal evidence in direct contradiction to the charges and police reports that were drafted by Troopers Nieves and Weight in this case. In sum, the requested deposition will provide a significant insight on why Troopers Nieves and Weight failed to obtain key evidence in Bartlett's criminal case it had been repeatedly requested by Bartlett and why this evidence was not produced until after key portions of the videotape were destroyed. To fully understand the relevance of Ingram's testimony a brief discussion of the facts is necessary.

II. FACTUAL BACKGROUND

As part of his activities at the 2014 Arctic Man, Trooper Nieves was put in contact with Mr. Thain, a KTVA reporter, who desired to film the trooper's activities at Arctic Man.[1] As part of this process Mr. Thain put a wireless mic on Trooper Nieves so that his filming would be coordinated with audio.[2] As part of

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[1] Deposition of Nieves, pg. 28.

[2] Deposition of Nieves, pg. 30.

the filming of the Arctic Man, Mr. Thain recorded an hour of video.[3] Neither Troopers Nieves nor Weight taped recorded their contact with and arrest of Bartlett.[4] Even though Trooper Nieves had been followed by Mr. Thain for several hours prior to events, Trooper Nieves claimed he had no idea that Mr. Thain was videotaping Bartlett's arrest.[5]

After Bartlett's case was initiated, Bartlett contacted the Assistant DA requesting discovery to include any audio or video of the case and informed the DA that he understood that somebody had videotaped his arrest.[6] On August 12, 2014m, the DA responded indicating that no such video existed and they were unaware of anyone tape recording Bartlett's arrest.[7] Troopers Nieves told his supervisor that there was no audio for the case.[8] It was not until December 1, 2014, that Trooper Nieves finally reported to the Assistant DA that the entire event had been audio and video taped by Mr. Thain.[9] Unfortunately, by the time the video was finally subpoenaed by the troopers (upon contact by Bartlett's counsel) not all of the video had

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[3] Deposition of Thain, pg. 10.

[4] Deposition of Nieves, pg. 31 and Weight, pg. 23.

[5] Deposition of Nieves, pgs. 30, 36.

[6] Exhibit A.

[7] Exhibit B.

[8] Exhibit C.

[9] Exhibit D.

been preserved, with only those portions that had actually aired being preserved.[10]

In reference to Ingram, all that counsel knows to date is the report in the Alaska Dispatch attached as Exhibit B to the State's motion to quash. The State argues that Ingram's seizure of video related to evidence of a shooting. But the Alaska Dispatch report says that the images simply contained pictures of the arrest of the alleged suspect, not pictures of any underlying events.[11] Regardless, according to the Alaska Dispatch Ingram claimed that the images of the arrest were evidence and as such needed to be seized. The basis of Ingram's beliefs in these positions is currently unknown.

As reflected in Exhibit C to the State's motion to quash, Bartlett has attempted, through other channels, to obtain evidence regarding the policies of the State of Alaska regarding the gathering of evidence at a crime scene. The State has responded by contending that there are no such policies or directives.[12] Furthermore, at his deposition, Trooper Nieves testified that, in his view, he was simply under no obligation to obtain evidence relative to a crime he is bringing against an individual.[13]

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[10] Deposition of Thain, pgs. 13-14.

[11] In Bartlett's case he was actually charged with resisting arrest and thus the video was direct evidence of the alleged crime.

[12] Exhibit C to Motion to Quash.

[13] Deposition of Nieves, pgs. 38-41.

The State's contention, at page 2 of the motion to quash, that Ingram is not an in either parties' witness lists or disclosures is simply inaccurate. Upon obtaining this information Bartlett promptly provided a supplemental disclosure relating to Ingram.[14] Final witness lists are due on December 7, 2015.[15]

III. ARGUMENT

Ingram's deposition is relevant to Bartlett's case.

The relevance of Ingram's testimony must be evaluated within the context of Bartlett's case. Fed. R. Civ. P. 26(b) provides: "parties may obtain discovery regarding any non-privileged matter that is relevant to any parties claim or defense..." and that "relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Indeed, there is a federal policy favoring broad discovery in civil rights actions in favor of full disclosure.[16]

Since 1988 it has been the law in the Ninth Circuit that a bad faith failure to collect potentially exculpatory evidence violates the due process clause.[17] Accordingly, why Troopers Nieves and Weight failed to request or otherwise obtain the full video of Bartlett's

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[14] Exhibit E.

[15] Scheduling and Planning Order (DE 14).

[16] *Jones v. Jennings*, 788 P.2d 732, 736 (Alaska 1990) citing *Inmates of Unit 14 v. Rebideau*, 102 F.R.D. 122, 128-29 (N.D.N.Y. 1984).

[17] *Miller v. Vasquez*, 868 F.2d 1116, 1120-21 (Ninth Circuit 1989).

arrest and surrounding events, prior to the majority of the video being destroyed, is a key issue in Bartlett's case, not only from the standpoint of a violation of due process but also to establish that Troopers Nieves and Weights actions were driven by the desire to conceal that they had brought false charges against Bartlett and had assaulted Bartlett to grandstand in front of the camera.

The State of Alaska has also held that under certain circumstances there is an affirmative duty to collect and preserve evidence that the police know is important to the defense of a charge.[18] In *Carter v. State*,[19] the court held that this duty does not apply if the defendant knows the evidence exists and understands the importance of it, the evidence is not ephemeral and the defendant has the same opportunity as the government to subpoena or otherwise obtain the evidence. In Bartlett's case, Bartlett had no idea who had filmed his arrest and tried to preserve that evidence by promptly requesting that information from the DA's office - which office provided inaccurate responses based upon the inaccurate responses they received Troopers Nieves and Weight. The evidence was ephemeral and was partially destroyed by the news reporter, who only saved those portions of the video that he ran on air. Lastly, because Bartlett did not know who had taken the video he could not obtain the video until he knew who filmed the video.

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[18] See *Klumb v. State*, 712 P.2d 909, 912 (Alaska App. 1986).

[19] Slip Opinion #2466 (Alaska August 7, 2015) attached hereto for the court's convenience as Exhibit F.

The jury is ultimately going to be required to determine why Troopers Nieves and Weight failed to obtain the audio and video of the events from Mr. Thain, even after they had failed to activate their own recorders. Bartlett will argue that Troopers Nieves and Weight deliberately failed to gather this evidence because the video demonstrated the falsity of the charges against Bartlett and the gross inaccuracy of both the charges and the police report submitted by Troopers Nieves and Weight. Troopers Nieves and Weight will contend that they were not motivated by such sinister objectives and that they simply did not request or obtain the video because there was no policy, procedure or training provided to Alaska State Troopers directing that they gather the video.

Bartlett fully expects that Ingram's deposition will provide evidence, from an Alaska State Trooper, regarding the training, policies and procedures of the Alaska State Troopers that motivated him to obtain an arrest video and that those policies, training and procedures will be very helpful to proving Bartlett's position regarding the motives of Troopers Nieves and Weight. Bartlett will then be able to take the policies, procedure and training identified by Ingram and provide that to his experts to provide expert testimony in the case. Bartlett has no intention of questioning Ingram on what should have happened in Bartlett's case. Rather, the questioning will focus on Ingram's knowledge of policies, procedures and training that Troopers Nieves and Weight contend does not exist but must exist to explain Ingram's actions under almost identical facts and circumstances. Given the misleading and inaccurate information provided by Troopers Nieves and Weight to date, Bartlett should not be left

to rely upon Troopers Nieves and Weight to accurately set forth trooper policy regarding the seizure of relevant evidence that is known to exist but is not obtained as part of the criminal prosecution. If Ingram testifies that there are no policies, training or procedures regarding the seizure of relevant evidence of criminal activity then this testimony will greatly benefit Troopers Nieves and Weight.

IV. CONCLUSION

Bartlett has noticed Ingram's deposition to obtain discovery regarding the policies, training and procedures of Alaska State Troopers on the gathering of evidence. These policies, training and procedures are directly relevant to proving why Troopers Nieves and Weight failed to obtain relevant evidence in this case until after that evidence had been partially destroyed and after Bartlett's defense had been trying to obtain that evidence for months. Bartlett should not be forced to rely upon Troopers Nieves and Weight regarding what policies, training and procedures are relevant to this case. The deposition will be minimally intrusive, relatively inexpensive and will take less time than the motion practice launched by the State to prohibit Bartlett from obtaining this highly relevant discovery. An appropriate order is lodged herewith.

DATED this 10th day of November 2015.

/s/ Zane D. Wilson
714 Fourth Avenue, Suite 200
Fairbanks, Ak 99701
Phone: (907) 452-1855
Fax: (907) 452-8154

Email: zane@alaskalaw.com
Attorney Bar #9111108

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Exhibit A

Cook Schuhmann & Groseclose, Inc.

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Barbara L. Schuhmann
Robert B. Groseclose
Jo A. Kuchle
Zane D. Wilson
Craig B. Partyka
Danielle M. Gardner
Mary S. Spiers

July 16, 2014

sender's email address:
zane@alskalaw.com

Via Facsimile

Palmer District Attorney
515 E. Dahlia Avenue, Suite 150
Palmer, AK 99645

Re: State v. Bartlett
Our File No: 5874.01

Dear Mr. Beard:

We understand that there may have been an individual on scene at the time of this incident that took video of the events. Please consider this a formal discovery

request for the name, addresses and phone numbers of any individual who took video of Mr. Bartlett's arrest or the events preceding his arrest.

Your proposed resolution is not acceptable. Mr. Bartlett was assaulted and wrongfully arrested by the troopers involved in this incident.

Thank you for looking into this discovery request.

Sincerely,
COOK SCHUHMANN & GROSECLOSE, INC.

By: /s/_____
Zane D. Wilson

ZDW/nl
cc: client

Exhibit B

SOA 0235- SOA 0236

Niki L. Lightly

From: Zane Wilson
Sent: Tuesday, August 12, 2014 3:14 PM
To: Beard, Raymond E (LAW)
Cc: Niki L. Lightly
Subject: RE: BARTLETT, Russell (3GL-14-25CR)

Dear Mr. Beard:

I understand the rules, I was simply hoping we could accomplish what needs to be done without the formalities-given that Trooper Weight will be a required witness for the State. I thought my letter made clear that this was as a request that you did not have to honor. We will serve Trooper Weight directly. I see no need for you to quash the subpoena we served on you, I am not making any claim that the service on you is effective for anything.

Are you suggesting that Trooper Weight is lacking access/knowledge to the Trooper policies on the points we have requested? If Trooper Weight is unable to produce and discuss the Trooper policies on these issues I will be happy to get that testimony before the jury and leave it at that.

I will file a motion to compel the discovery we are seeking- per existing case law. That is what it generally takes but I always inquire first as the court prefers that counsel make an effort to resolve these issues before bringing them before the court.

As an FYI, I will be caribou hunting on August 18 (I will have an associate attend in my absence) and moose hunting form September 5-12. I am not opposed to trying this case as soon as can be scheduled thereafter but it sounds like we have some discovery issues to litigate.

I look forward to meeting you also.

Zane

From: Beard, Raymond E (LAW) [mailto:raymond.beard@alaska.gov]
Sent: Tuesday, August 12, 2014 2:00 PM
To: Zane Wilson
Subject: BARTLETT, Russell (3GL-14-25CR)

Dear Mr. Wilson,

We received in the mail a subpoena for Trooper Weight to appear and produce at the Glennallen courthouse at an unspecified time on August 19, 2014. The District Attorney's Office does not receive service for Alaska State Troopers. Therefore, we are returning that subpoena to you by U.S. Mail. Please note that service of subpoenas in a criminal case is governed by Criminal Rule 17(d).

As a suggestion, you may be able to obtain the policy information you seek directly from the Alaska Department of Public Safety rather through an individual trooper who may not possess such information. I also believe, but I am not sure, that a defendant seeking such production is required to motion the court for a hearing to address the issue. I

will therefore ask the court to quash this current subpoena.

You also asked in the letter which accompanied the subpoena whether the State intended to respond to your outstanding discovery request. Discovery in a criminal case is handled in a rather perfunctory manner under Criminal Rule 16 – the State provides the defendant with all required discovery without request. That was performed on May 21, 2014 when the State sent you six pages. Those same six pages were sent to you again on June 17, 2014. We have no physical evidence in our possession.

We asked Trooper Weight If there is any audio. He indicated that there is not. I do not know whether some private person videotaped the incident. I would certainly want to view any such video if it exists, and the State would provide that evidence to you if it were in our possession, but is not. If you are able to locate such a recording, I would greatly appreciate the opportunity to inspect and copy.

I'm planning to be in Glennallen for calendar call on August 18. I look forward to seeing you there.

Sincerely,
Ray Beard

Raymond Beard
Assistant District Attorney
Palmer District Attorney's Office
T (907) 761-5648
F (907) 761-5687

Exhibit C

SOA 0435 - SOA 0436

Status/assignment information:

Status: Completed

Opened: Assigned: Due: 04/15/2014 Completed: 05/26/2014

Disposition: Within Policy

Unit assigned: Un-assigned
Handled at field/unit level: No
Investigator assign: Un-assigned
Supervisor assign: Un-assigned
Source of information:

Organizational component(s):

Division: State Troopers
Detachment: B
Post: Palmer

BlueTeam chain routings

Apr 15, 2014 21:34: Sent from Trooper Bryce L Weight [BLW1/308024] to Sergeant Luis A Nieves [LAN1/305069]

Instructions:

Blue team use of force Incident for your review.

Reviewed by Sergeant Luis A Nieves [LAN1/305069] on Jan 16, 2015 at 16:10

Decision: Approved

Reviewer comment:

[Forwarded by Sergeant Luis Nieves]

CC(s) of this routing were sent to the following:

Apr 16, 2014 08:57: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

LT here is the blue team report as requested for the Arctic Man Incident.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 10:07

Decision: Not approved
Missing Information

Reviewer comment:

Sgt. Nieves: Please ensure that all audios for this contact are attached. If there are no audios, for whatever reason, then please forward this back to me.

Apr 16, 2014 10:07: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Sergeant Luis A Nieves (LAN1/305069]

Instructions:

Please add the audio to this incident. If there is no audio, then forward back to me.

Reviewed by Sergeant Luis A Nieves [LAN1/305069] on Jan 16, 2015 at 11:26

Decision: Approved

Reviewer comment:

No audio.

Apr 16, 2014 11:26: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

No audio. Our new recorders (Olympus DM-620) do not have the remote controls to activate in a dynamic situation. We must manually pull them out of our vests/shirt pockets, take them off hold (side button), press record (front button on face of recorder; poor design that if not on hold will either start or stop recording due to all control functions being on the face of the recorder [stop, record, pause]), put the recorder back on hold, then return it to our pocket. The current remotes available for this recorder retail at $300.00 (DPS supply does not provide this accessory). No audio due to technical design failure.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 08:19

Decision: Approved

Reviewer comment:

[Forwarded by Lieutenant Lawrence Piscoya]

Apr 18, 2014 08:19: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Captain Burke W Bartick [BWB0/250337]

Instructions:

> I asked Sgt. Nieves a few questions. He indicates the person is not known by the campsite renters, where the party was occurring. He was heavily intoxicated and Sgt. Nieves indicates he was getting closer and closer to the troopers face from his point of view. The subject was aggressive and intoxicated. By the time, Sgt. Nieves arrived, Trp. Weight pushed the subject away and they took him to the ground. Trp. Weight indicates he felt threaten with Mr. Bartlett's aggressive manner as he approached. He stated in his report that at one time, he felt that Mr. Bartlett was going to hit him and felt threatened.

Reviewed by Captain Burke W Barrick [BWB0/250337] on Jan 16, 2015 at 15:12

Decision: Approved

Reviewer comment:

Exhibit D

SOA 0401 - SOA 0402

FW: BARTLETT, Russell (3GL-14-25, AK 14025280) https://webmaila.alaska.gov/owa/?ae=Item&t=IPM.Note&id=RgAAA ... 2 of 3

Alaska State Troopers
Recruitment/Background Unit
Toll Free: 877-AKTROOP
Fax: 907-269-5751
JOIN THE STATE TROOPERS
Like Us On **facebook**
twitter

From: Beard, Raymond E (LAW)
Sent: Monday, December 01, 2014 2:12 PM
To: Nieves, Luis A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

I watched the video clip that is on KTVA's website. I don't like the editing of it. I would like to get the original footage.

From: Nieves, Luis A (DPS)
Sent: Monday, December 01, 2014 1:17 PM
To: Beard, Raymond E (LAW)
Cc: Despain, Timothy J (DPS); Peters, Megan A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

Ray,

The reporter in this case was also the camera man. He was standing next to or near me throughout my entire contact at this camp site. https://www.youtube.com/watch?v=PiyXomUflu4

I am working on getting contact info from our PIO now.

Let's just issue him a subpoena to appear.

Lu

Sergeant Luis Nieves
Alaska State Troopers
Recruitment/Background Unit
Toll Free: 877-AKTROOP
Fax: 907-269-5751
JOIN THE STATE TROOPERS
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twitter

From: Beard, Raymond E (LAW)
Sent: Monday, December 01, 2014 1:11 PM
To: Nieves, Luis A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

Thank you. I viewed the video on their website. Do you think we can obtain the uncut footage of the incident, and the contact info of the film crew?

From: Nieves, Luis A (DPS)
Sent: Monday, December 01, 2014 1:01 PM
To: Beard, Raymond E (LAW); Miner, Joel A (DPS); Weight, Bryce L (DPS

Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

We have the media that was with us. Channel 2 news I believe. This incident was on the news.

Sergeant Luis Nieves
Alaska State Troopers
Recruitment/Background Unit
Toll Free: 877-AKTROOP
Fax: 907-269-5751
JOIN THE STATE TROOPERS
Like Us On **facebook**
twitter

From: Beard, Raymond E (LAW)
Sent: Monday, December 01, 2014 12:05 PM
To: Nieves, Luis A (DPS); Miner, Joel A (DPS); Weight, Bryce L (DPS)
Subject: BARTLETT, Russell (3GL-14-25, AK 14025280)

Troopers,

Please call me regarding this Arctic Man case. It was filed as a resisting arrest and disorderly conduct. I am considering adding a fear assault against Trooper Weight and an attempted assault against Sgt. Nieves.

The defense, attorney Zane Wilson of Fairbanks, is attempting to make this out as though Trooper Weight assaulted Bartlett. Wilson called ready at Glennallen's trial week in October. Rule 45 is running so we may have to go to trial next week, but we also have other

cases in Glennallen with time running. So Bartlett may go later.

My direct line in the office is [redacted]. My personal cell is [redacted].

Thanks,
Ray

Raymond Beard
Assistant District Attorney
Palmer District Attorney's Office
T (907) 761-5648
F (907) 761-5687

Exhibit E

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT FAIRBANKS

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants,	)

PLAINTIFF'S SECOND SUPPLEMENTAL DISCLOSURE STATEMENT

Plaintiff, Russell Bartlett, hereby submits his second supplemental disclosures as required by Alaska R. Civ. P. 26(a)(1).

D. DISCOVERABLE DOCUMENTS

The following documents are attached:

1. Copy of Alaska Dispatch News web article, indentified as Bartlett.070-071.

DATED this 24, day of September 2015.

/s/Zane D. Wilson
Zane D. Wilson, # 9111108
714 Fourth venue, Suite 200
Fairbanks, AK 99701
Phone: (907) 452-1855
Fax: (907) 452-8154
Email: zane@alaskalaw.com
Attorney Bar #9111108

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Alaska Dispatch News

Published on *Alaska Dispatch News* (http://www.adn.com)

Home > Newspaper files complaint after Alaska trooper seizes reporter's memory card

Michelle Theriault Boots [1]
September 6, 2015

The Mat-Su Valley Frontiersman has filed a complaint with the state Department of Public Safety after a veteran Alaska State Trooper pulled over a reporter last week and seized his camera memory card, saying news-gathering images of an arrest constituted "evidence."

The Wasilla newspaper's complaint says trooper Sgt. Mike Ingram's actions violated constitutional protections of freedom of the press and against unlawful search and seizure.

The Department of Public Safety, which oversees troopers, says it is investigating.

The incident happened when Frontiersman reporter Brian O'Connor went to cover a reported shooting near the Parks Highway in Willow Wednesday morning, the newspaper wrote in a front page article published Sunday. [2].

O'Connor took photos of a man being arrested from a public roadway about 100 yards away and then left in his personal vehicle, according to Frontiersman Managing Editor Matt Tunseth. O'Connor had twice identified himself as a journalist at the scene, the newspaper said.

The reporter had driven a couple of miles from the scene when Ingram pulled him over.

The trooper "demanded that O'Connor turn over either his camera or the digital memory card containing pictures of the arrest, saying it was potential evidence," according to the newspaper's published account of events [2].

O'Connor offered to share the images with authorities. but "Ingram said he had to take the card into his possession" and the reporter complied, the article said.

There was never any explicit threat of arrest and the exchange was cordial, Tunseth said.

Still, the reporter was ordered to give up his camera or memory card by a uniformed law enforcement officer.

"Brian's understanding was that he had to do this," Tunseth said.

After hearing about what happened, Tunseth and publisher Mark Kelsey contacted troopers to ask about the incident. Within a few hours, the memory card was returned.

None of the photos had been deleted, according to Tunseth, a former Alaska Dispatch News sports reporter who recently took the helm at the Mat-Su paper.

On Friday, after the paper filed its formal complaint, the newspaper was told an internal investigation was underway.

The newspaper is not asking for the trooper to be disciplined.

The editor and publisher spoke directly to the director of the Department of Public Safety, Col. James Cockrell.

"I have every assurance from Col. Cockrell that they are taking this seriously," Tunseth said.

Cockrell declined to answer questions about the incident Sunday.

The department released a statement through spokeswoman Beth Ipsen saying it would have no comment until an investigation through the Office of Professional Standards had been completed.

"We will not be commenting further until we have had a chance to review the information to determine what happened and if any department policies were violated or if the actions of the troopers involved were warranted under the circumstances," the statement said.

On Sunday, the newspaper ran a news article and editorial [3] about the incident that praised the department as a "highly professional and distinguished group" but said it "acted contrary to the public's trust" and needed to be held accountable.

"We've always had good relations with (troopers)," Tunseth said. "We just think this could have been handled a little differently."

Source URL: http://www.adn.com/article/20150906/newspaper-files-complaint-after-alaska-trooper-seizes-reporters-memory-card

Links:
[1] http://www.adn.com/author/michelle-theriault-boots.
[2] http://www.frontiersman.com/news/frontiersman-files-trooper-complaint/article_6d1cca68-543f-11e5-a5c1-a3fce5b89fc1.html
[3] http://www.frontiersman.com/opinions/troopers-must-be-held-accountable/article_d5d0b4de-543f-11e5-ba9e-7701d9f8e307.html

In The Matter Of:
RUSSELL BARTLETT v.
LUIS NIEVES, et al.,

LUIS NIEVES
July 31, 2015

Metro Court Reporting
405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
metro@gci.net

* * *

[p.28]

A I was -- I was the one in charge.

Q You were the sergeant?

A I was -- yes, and I was the senior person present and the senior person on call and on shift at the time.

Q When -- let me back up here. And how did it come about that a -- the Channel 2 news crew was at the Arctic Man with the pol -- with the Troopers?

A They made a request through the Public Information Office at Headquarters and they received permission to ride with the -- with the Alaska State Troopers to observe the Arctic Man, the event. And Lieutenant Piscoya directed me to have the news crew ride with me.

Q Did you play any role in Lieutenant Piscoya's decision to have the news crew ride with you?

A No.

Q I mean, did you -- did you request it?

A No, I was assigned.

Q Do you believe that having a news crew with you in any way impacts how you go about doing your job as a police officer?

A No.

Q When did you arrive at the party that -- I mean, I'll ask you this. If we can ref -- if we refer to it you understand what I'm saying at .....

A Uh-huh (affirmative).

* * *

[p.30]

the Troopers and the public.

Q And -- so, at the time you respond to Mr. Sadler's party you have this TV crew with you, is that correct?

A Yes, it's one cameraman with a camera.

Q And who was that cameraman?

A I don't remember his name.

Q Does John Thain ring a bell?

A Yes. Yes, John Thain.

Q And at the time you arrive you know that this cameraman, Mr. Thain what he's up to is he's following around with you videotaping, correct?

A Yes. He's making the news story.

Q How long had you been with Mr. Thain prior to your arrival at Mr. Sadler's party?

A I think several hours. I'm not sure there -- how long but it was several hours at that point.

Q And as part of this cameraman thing you were mic'd up with -- with something specific to the cameraman or you had your own mic or how was it .....

A No. They -- they placed a mic on me, Mr. Thain placed a mic on me.

Q And how did he -- how did he do that, what did he do?

A It's their wireless mic, it has like a -- a little box receiver and then a -- a microphone similar to what I'm wearing right now and it's a wireless.

[p.31]

Q So, before you got out of the car is it fair to say that you knew you were going there to investigate minor consuming?

A Yes.

Q If you know you're going to a scene to investigate why don't you activate your audio recorder at that point?

A At that point I had multiple officers, music, it was a -- a -- I had just spoken to one of the Troopers there and -- which was Trooper Weight who advised me of the situation. I didn't activate my recorder. I

have a -- don't have a reason why I didn't activate my recorder I just went in to go and speak with the -- my goal was to speak with who -- who was ever in charge of the camp site and tell them that people were that kids were talking their alcohol and they needed to store their alcohol.

Q Sure. You would -- would you agree with me that you could have easily activated your recorder before you got out of your police vehicle?

A It -- it depends. The -- the -- this type of a recording system that I have if -- if I allow myself enough time for officer safety I can activate this -- this recorder but in this situation where it was -- it was still developing I -- I just didn't think of activating it at the time. I didn't know what I had inside the campground itself with all the loud music and everything else and

* * *

[p.36]

A I had a reason to be there.

Q ..... how many minors did you see consuming alcohol there?

A My -- my Troopers reported more than one and that's more than enough for me to know that it's a concern.

Q That's fair enough. But my -- so, my question to you is, how many minors were there to your knowledge?

A I don't know.

Q Was it fairly obvious to you that the vast majority of the folks there were adults?

A No. That's why I had to -- that's why I had to get on to the camp site and see what was going on there.

Q So, did you have an understanding as you got out of your vehicle and approached this party, did you have an understanding as to whether or not Mr. Thain was, in fact, videotaping the events?

A I don't know. I don't know.

Q Did you ever ask him?

A No. I -- I had to focus -- I'm not focusing on him, I'm focusing on the safety of my officers and the safety of the scene and the fact that there's juveniles consuming alcohol.

Q Well, you certainly had an understanding that was the whole reason he was there, right, was to videotape events?

MS. GALBRAITH MOORE: Objection, form, ...

* * *

[p.38]

Q And you knew that before you got out of the vehicle and approached Mr. Sander's party, correct?

MS. GALBRAITH MOORE: But -- okay.

A I don't know what he was filming at that point.

Q That's not what I asked you. At -- at -- my question was you knew that the reason he was there was to videotape to make a news story and you knew that

before you got out of the car and approached the Sadler party?

MS. GALBRAITH MOORE: Objection, form of the question and foundation.

A I knew that he was riding with me to film Arctic Man to make a news story, yes.

Q (By Mr. Wilson) And you knew that before you got out of the car to approach Mr. Sadler's party?

A I knew that before I even left headq -- the command center with him.

Q At -- the -- this -- we'll come back to this but after we get done with you -- after you've dealt with the situation there at Mr. Sadler's party did you ever go back to Mr. Thain and ask him whether or not he had videotaped any of these events so that you could have that record of these events?

A No.

Q Why didn't you ask him?

A It's not my -- it's -- it's not my property. It's -- and

[p.39]

I -- and I don't know what he was recording, I don't know when he turned on his recorder or not.

Q And the way you answer those questions is you ask him, right?

A I had no obligation to ask him.

Q Whether you had an obligation to or not why didn't you?

A Because I had no obligation to do so, there was no reason to.

Q So, you have somebody who probably is videotaping the events that take place in which you're going to charge somebody with a crime and your testimony is that you have no reason to ask them whether or not they videotaped .....

MS. GALBRAITH MOORE: Ob.....

Q ..... those events?

MS. GALBRAITH MOORE: Objection, form and foundation.

A He -- he's a member of the media, I have no idea nor any control over what he's filming, whether he turns on his recorder or not. My obligation is to ensure that my officers are safe, that people are obeying the law and if someone's sa -- needs to be arrested they're arrested.

Q (By Mr. Wilson) Go back to my question. Is it your testimony that you go to a incident like this with Mr. Sadler's party, you jump on somebody, physically arrest them, okay, intend to bring charges against them and that

[p.40]

there is quote: No reason to ask the video guy whether or not he video recorded those events, is that you testimony?

MS. GALBRAITH MOORE: Objection, ...

A I .....

MS. GALBRAITH MOORE: .....form, foundation. That's -- that was not his testimony and don't -- don't try.....

MR. WILSON: Well, whatever.

MS. GALBRAITH MOORE: ..... (indiscernible - simultaneous speaking).

MR. WILSON: That's -- that's why I'm asking him.

MS. GALBRAITH MOORE: (indiscernible - simultaneous speaking) those face were not on the table.

A No. My -- my obligation is to figure out why your client was trying to attack my -- my Trooper and why your -- your client was being aggressive toward my Troopers and why we eventually had to arrest him because he was acting in a manner that wasn't reasonable and was creating a dangerous situation for all my officers there.

Q (By Mr. Wilson) Let me ask the question a different way and hopefully I can get an answer this time. Why isn't that enough of a reason to go to the -- Mr. Thain and say, hey, you just were there, right there acting like you're videotaping this that's going on here, did you actually videotape it? What .....

[p.41]

A There's no obligation.

Q Mr .....

A We have more than enough .....

Q ..... Mr. Nieves I'm not asking .....

A ..... we had more than enough.

Q ..... about your obligations, okay.

A Uh-huh (affirmative).

Q I'm asking you why isn't that a sufficient reason to ask him?

MS. GALBRAITH MOORE: Just for clarification what is the that? Why didn't -- what is .....

Q The incident that took place with Mr. Bartlett, the fact that you know Mr. Thain was there probably videotaping it, why isn't that a sufficient reason for you to ask Mr. Thain whether or not he videotaped the events?

A I don't know if he recorded and I didn't need anything from him at the time because I already had testimony from my Troopers that were on scene and my observations of a crime that was committed which was disorderly conduct and resisting arrest.

Q And you also knew that none of you there were activating your tape recorders to record the events, correct?

A I had no idea.

Q Well, you knew you hadn't, ...

A I had no .....

* * *

[p.114]

SIGNATURE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, LUIS A. NIEVES, have read the foregoing deposition, and have made corrections thereto. Any and all changes, explanations, deletions and/or additions to my testimony may be found on the correction sheet (s) enclosed with this transcript.

LUIS A. NIEVES

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this Day of 2015, before me appeared LUIS A. NIEVES, to me known and known to be the person named in and who executed the foregoing instrument, and acknowledge voluntarily signing and sealing the same.

Notary Public in and for
State of Alaska, at Anchorage
My Commission Expires:

In The Matter Of:
RUSSELL BARTLETT v.
LUIS NIEVES, et al.,

JOHN THAIN
September 18, 2015

Metro Court Reporting
405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
metro@gci.net

* * *

[p.10]

story.

Q Okay. And what did you do to prepare Trooper Nieves for this, I mean did you mic him? I mean how -- what did you do that involved him and you working together to be able for you to participate -- prepare this story?

A Yeah, he wore a wireless microphone and I just kinda stayed near by him through the whole evening.

Q And did you provide the wireless microphone?

A Yes.

Q And how did that wireless microphone work, was it something that was continuous or something that was not continuous?

A It's hooked directly into the TV camera so it records audio only when the camera is rolling.

Q And then what's your overall approach to something like this, are you just shooting video pretty much constantly when there's any kind of activity and you edit from there, or do you kinda self edit as you shoot video?

A Yeah, I -- I just shoot a lot of video, I think I shot about an hour of video over the four hours and cut it down to a two or three minute piece.

Q Is there any doubt in your mind that even before this process took place that Trooper Nieves was fully aware of the fact that you were videoing and recording his activities?

* * *

[p.13]

camera how bright, how obvious is that?

MS. GALBRAITH MOORE: Objection, form. Are we talking about obvious to people who are sober or not sober?

MR. WILSON: To a normal person.

A I don't know how bright the light is exactly, it's a LED panel. I guess it depends on the amount of light that's in the scene. When you turn it on you may or may not notice it.

Q (By Mr. Wilson) Did you have any conversation with Trooper Nieves about you -- were you gonna give him any indication when you started videotaping, or that was just kind of in your discretion and he

didn't know necessarily you were videotaping, except if you had your camera on your shoulder and were looking at him? Or explain to me what you discussed in that regard.

A There was really no discussion I just told him I would be filming throughout the night.

Q At this time do you have all of the video that you took at Arctic Man?

A No.

Q And explain to me what's the process for how that -- you have all this video that you take and how you wind up with no longer having all that video.

A Yeah, I -- we take a lot of video and we edit it all down to a finished piece usually that day or soon after. And

[p.14]

then the -- the raw video, the -- everything that was recorded gets deleted a few months down the line.

Q Can you give me any more specifics other than a few months down the line, I mean is there a policy in that regard, like 60 days, 90 days?

A The -- the idea at our station is to save stuff for six months but sometimes that doesn't happen.

Q Do you in fact know how long this particular video of your ride along with Trooper Nieves was in fact saved before it was deleted following the events you videotaped?

A No.

Q Is there any way you can ascertain that?

A No.

Q Who in fact deletes that video?

A It's usually our operations manager David DeGraffenreid.

Q Can you say that name again?

A David DeGraffenreid.

Q Could you spell that for us?

A I'm not sure how to spell DeGraffenreid actually. I can look it up.

Q Can you give us your best shot?

A Hold on one second I do have it here. It's -- DeGraffenreid is capital D-e capital G-r-a-f-f-e-n-r-e-i-d.

* * *

[p.61]

SIGNATURE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, JOHN THAIN, have read the foregoing deposition, and have made corrections thereto. Any and all changes, explanations, deletions and/or additions to my testimony may be found on the correction sheet (s) enclosed with this transcript.

JOHN THAIN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this Day of 2015, before me appeared JOHN THAIN, to me known and known to be the person named in and who executed the foregoing instrument, and acknowledge voluntarily signing and sealing the same.

Notary Public in and for
State of Alaska, at Anchorage
My Commission Expires:

In The Matter Of:
RUSSELL BARTLETT v.
LUIS NIEVES, et al.,

BRICE WEIGHT
July 31, 2015

Metro Court Reporting
405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
metro@gci.net

* * *

[p.23]

would it be .....

A I understand.

Q ..... accurate to say that it is your standard practice?

A Before I contact someone that I'm going to charge criminally I try to audio record -- or start my audio recorder.

Q And why did you not do that at -- in this instance as you exited your vehicle? Well, act -- back up, did you?

A No.

Q Okay. Why did you not?

A I would say a couple different reasons. One, I don't know for sure if I am going to be contacting someone that's being charged criminally. Two, minor consuming is not criminal unless it's the

third one, the third time you've been charged with it, of course. And three, every time we got out of the vehicle which was many times throughout the course of the events or so, several days, every time you got out of your vehicle no, you don't activate your audio recording every single time. Sometimes you're just walking around saying hi to people, people are waving at you, you're waiving at them.

Q You had your audio recorder on you on this day, correct?

A I did.

Q And it was functioning, is that correct?

A I believe so.

* * *

[p.96]

SIGNATURE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, BRYCE L. WEIGHT, have read the foregoing deposition, and have made corrections thereto. Any and all changes, explanations, deletions and/or additions to my testimony may be found on the correction sheet (s) enclosed with this transcript.

BRYCE L. WEIGHT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this Day of 2015, before me appeared BRYCE L. WEIGHT, to me known and known to be the person named in and who executed the foregoing instrument, and acknowledge voluntarily signing and sealing the same.

Notary Public in and for
State of Alaska, at _____
My Commission Expires:

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

[Filed January 29, 2016]

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

Introduction

This case arises out of Russell Bartlett's arrest for disorderly conduct at Arctic Man, an extreme ski event held annually in the Hoodoo Mountains near Paxson, Alaska. According to a KTVA news story, Arctic Man attracts so many people that "for three days campers turn the Hoodoo Mountains into Alaska's fourth largest city."[1] Arctic Man's remote location, large crowds, and

[1] Plaintiff's Ex. A to the Complaint.

the high levels of alcohol use, however, raise significant law enforcement challenges.

In April 2014, on the last night of Arctic Man, and after several hours of drinking, Russell Bartlett interfered with a trooper's investigation of minors consuming alcohol and was charged with disorderly conduct and resisting arrest. The State of Alaska pursued Bartlett's prosecution for several months, but because of State budget issues, later dismissed the case. Bartlett then sued the troopers who arrested him, claiming false arrest, false imprisonment, malicious prosecution, and excessive force. But contrary to Bartlett's assertions, the State's disorderly conduct charges against him were "neither novel nor extravagant," probable cause to arrest him existed, and the use of force to secure Bartlett and make the arrest was reasonable and measured. Bartlett was not injured.

Troopers Luis Nieves and Bryce Weight are entitled to qualified immunity on Bartlett's 42 U.S.C. § 1983 claims of false arrest, false imprisonment, and malicious prosecution. Absolute immunity also bars the malicious prosecution claims because the prosecutor took responsibility for the criminal case. Bartlett's due process and conspiracy claims also fail as a matter of law.

Facts

A. "Crazed Nights" at Arctic Man.

Arctic Man has been described as "Wild Rides and Crazed Nights at America's Most Extreme Ski Race."[2] These "crazed nights" create public safety concerns because large groups of campers congregate in remote areas to drink and party, often from dusk to dawn.[3] Chaos and dangerous situations have arisen and resulted in arrests for alcohol fueled crimes. Troopers are assigned to protect and ensure public safety, working in shifts and staying in nearby military housing throughout the event.[4] Because the event's remote location limits the availability of law enforcement backup, AST deploys procedures for coverage at Arctic Man that seek to identify and minimize the heightened risks to campers and to the troopers.[5] These procedures include requiring troopers to pair up upon entering the beer tent and controlling unruly campers before injuries and crimes occur.[6]

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[2] White, Matt. Arctic Man, Wild Rides and Crazed Nights at America's Most Extreme Ski Race" http://www.sbnation.com/longform/2014/7/23/5923357/

[3] Ex. A, ¶ 2; Ex. B, ¶ 5.

[4] Ex. B, ¶ 5.

[5] Ex. B, ¶ 4.

[6] Ex. B, ¶ 4.

B. Bartlett interfered with an investigation.

On the last day of Arctic Man in 2014, a large outdoor party attracted many campers, including underage drinkers. Troopers Weight and Miner were patrolling when they saw several minors at the party who appeared to be drinking.[7] Shift supervisor Sgt. Luis Nieves went to provide backup and to look for the source of the alcohol.[8] He found a keg outside of a parked RV and asked the owners to move the keg inside the RV.[9]

Russell Bartlett walked toward the RV, got within five feet of Sgt. Nieves and demanded to know what was going on.[10] Bartlett yelled as Bartlett approached the RV and told the RV owner not to cooperate with troopers.[11] Sgt. Nieves tried to communicate with Bartlett but found that to be futile.[12] Sgt. Nieves was concerned that given Bartlett's apparent intoxication and his hostility to troopers, further interaction with Bartlett could needlessly escalate the situation.[13] Nieves' perception of Bartlett's intoxication was confirmed by Bartlett's friend David Krack, who later

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[7] Ex. G, ¶ 2.

[8] Ex. D, [Tr. 31:14-17].

[9] Ex. D, [Tr. 31:14-17, Tr. 70:1-13].

[10] Ex. E, [Tr. 21:14-22:15].

[11] Ex. D, [Tr. 62: 10 – 23]; Ex. F, [Tr. 68:13-69:4].

[12] Ex. D, [Tr. 65: 7-25].

[13] Ex. D, [Tr. 65:8-19].

admitted that he and Bartlett had been drinking beer throughout the night and were too intoxicated to safely drive.[14] Sgt. Nieves began returning to his trooper vehicle to leave.[15]

Meanwhile, Trooper Miner was in his vehicle processing underage drinkers while Trooper Weight contacted a teenager in the beer-thronged crowd. That teen was drinking. Trooper Weight then asked a second teenager to step away from the crowd.[16] At that point, Bartlett and Krack approached Trooper Weight, and Bartlett began yelling and demanding that Trooper Weight not talk to the teen.[17] Bartlett walked toward Trooper Weight and stopped within arm's reach.[18] Despite Trooper Weight's efforts to explain the situation to him, he found that trying to do so was futile as Bartlett continued to demand that Trooper Weight not talk to the teenager and to leave.[19]

Holding a beer in his lowered left hand, Bartlett raised his voice more and his right hand gestured toward Trooper Weight.[20] David Krack, who was roughly 10 feet away and had a clear view of Bartlett's

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[14] Ex. E, [59: 1-12].

[15] Ex. A, ¶ 3.

[16] Ex. G, ¶ 3.

[17] Ex. C, [Tr. 33:12-17, 34:3-6]; Ex. E, [29: 11-20].

[18] Ex. C, [Tr. 36:25-37:2, 37:16-22, 40:25-41:2, 43:2-5]; Ex. G ¶¶ 3-4.

[19] Ex. C, [Tr. 35:11-24].

[20] Ex. C, [Tr. 36:7-11].

right side, testified that Bartlett's right hand was raised toward Trooper Weight's face.[21] Bartlett's hand was close to Trooper Weight's face pointing.[22] The enhanced video of the arrest obtained by Assistant District Attorney Raymond Beard is consistent with this testimony.[23] Believing that Bartlett was about to assault him,[24] Trooper Weight placed his open palms on Bartlett's chest and, using a single push, moved Bartlett back to create a safer distance between the two men.[25]

From more than 50 feet away, Sgt. Nieves saw Bartlett walk toward Trooper Weight and the teen.[26] Believing that Bartlett was about to assault Trooper Weight, Sgt. Nieves rushed to assist.[27] As he approached, Sgt. Nieves heard Trooper Weight order Bartlett back and saw him move Bartlett back.[28] Sgt. Nieves believed that Trooper Weight perceived Bartlett to be a threat.[29] Thus, given Nieves' prior contact with

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[21] Ex. E, [Tr. 29:19-22, 33:17-34:3, 61:2-12].

[22] Ex. G, ¶ 7, attachment 2.

[23] Ex. H.

[24] Ex. C, [Tr. 36:19-22, 37:9-14, 54:18-20, 87:16-20].

[25] Ex. G, ¶ 4; Ex. C [Tr. 52:22-23].

[26] Ex. A, ¶ 5; Ex. D, [Tr. 72:3-15].

[27] Ex. D, [Tr. 82:12-15, 88:1-4].

[28] Ex. D, [Tr. 93:18-94:1].

[29] Ex. D, [Tr. 78: 4-9].

Bartlett near the RV, Bartlett's aggressive approach toward Trooper Weight, Bartlett's stance, and Trooper Weight's defensive push, Sgt. Nieves moved forward to arrest.[30]

Sgt. Nieves took hold of Bartlett's left arm and repeatedly ordered him to back up and to get down.[31] Trooper Weight then moved forward to assist as Nieves continued to order Bartlett to get to the ground.[32] The enhanced video shows Bartlett pulling his bent left arm away from Sgt. Nieves while yelling directly at the uniformed trooper.[33] Bartlett turned toward Nieves and then toward Weight while tensing his arms.[34] Trooper Weight attempted a leg sweep to get Bartlett to his knees.[35] Eventually Bartlett dropped to one knee, then the other, and then to all fours, but continued to tense his upper back and neck against the troopers' efforts to gain compliance.[36] Bartlett admits that he tried to

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[30] Ex. A, ¶ 6.

[31] Ex. A, ¶ 6.

[32] Ex. G, ¶ 5.

[33] Ex. H.

[34] Ex. G. ¶ 5; Ex. D, [Tr. 77:15-18].

[35] Ex. G, ¶ 5.

[36] Ex. G, ¶ 5.

"control" the takedown.[37] Ultimately, Bartlett complied with trooper commands and no one was hurt.[38]

Bartlett's arrest at the party was videotaped by a KTVA reporter covering a story on Arctic Man. The tape was edited by KTVA to delete Bartlett's profanities.[39] The quality of the video is not uniformly clear, depicts only a portion of the contact, and does not show the troopers' perspectives.[40] Even with these limitations, the video confirms some relevant aspects of the contact. At 1:44 to 1:55 the video shows that the troopers were investigating underage drinking at the large party. Trooper Weight is seen reporting to Sgt. Nieves upon Sgt. Nieves' arrival. At 1:55 to 2:01, the video shows Sgt. Nieves requesting the RV owner to move the keg inside the RV. The video confirms that Bartlett stood close to Trooper Weight and confirms — consistent with Trooper Weight's testimony — that Bartlett's presence caused Trooper Weight to stop his interview of the teenager.

The video from 2:03 to 2:09 shows Sgt. Nieves approaching Trooper Weight, the teenager, and

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[37] Ex. F, [Tr. 80:18-23].

[38] Ex. G, ¶ 8.

[39] Bartlett submitted the KTVA video with the complaint. The "enhanced" portion that the ADA secured in the criminal case is submitted here as Ex. H.

[40] Ex. I, [Tr. 44: 1-13]. Because the video was shot at 30 frames per second, watching the video by advancing just one second at a time will exclude from view 29 of 30 frames. Film uses a series of still frames to create the illusion of motion.

Bartlett. The video reveals that at 2:06 Trooper Weight moves Bartlett back. At 2:06 Bartlett's forehead comes into view, indicating that Bartlett was closing his distance towards Sgt. Nieves. At 2:07 Bartlett is shown facing Sgt. Nieves and for a split-second the camera's view of Bartlett is blocked by Sgt. Nieves. Sgt. Nieves moves to Bartlett's left side. By 2:10, Bartlett changes direction toward Trooper Weight, and at 2:11 Bartlett's head appears to come close to Trooper Weight's head. At 2:11 to 2:12 Trooper Weight attempts to bring Bartlett's right hand downward but Bartlett's arm stops moving. A frame from the video shows Bartlett yelling directly at Sgt. Nieves.[41] Sgt. Nieves repositions himself and then Bartlett pulls his own arm to chest level. Trooper Weight's leg sweep at 2:13 appears to be somewhat unsuccessful initially, with Bartlett's head coming very close to hitting Trooper Weight's face in the process. The troopers are then shown trying to bring Bartlett to the ground, using downward pressure and their body weight, with their heads and bodies at times close to Bartlett's head.

Afterwards, Sgt. Nieves informed Bartlett that he was going to jail for harassment.[42] Bartlett made several phone calls, made bail, and was released after a couple of hours.[43] No one was injured during Bartlett's arrest, including Bartlett.[44]

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[41] Ex. N; Ex. A. ¶ 6, Attachment 4.

[42] Ex. A, ¶ 8.

[43] Ex. F, [Tr. 27; 3-5]; Ex. E, [Tr. 41:1-22].

[44] Ex. F, [Tr. 91:11-14, 100:23-101:5].

After Bartlett was taken to the AST field tent, Trooper Weight, concerned that Bartlett was running interference for the teen who Weight had previously suspected of drinking, completed his interview with the teen and conducted a portable breath test.[45] Meanwhile, Sgt. Nieves called for additional trooper support for crowd control.[46] The KTVA reporter acknowledged that Bartlett's arrest was the biggest event he observed that night, and that his news story – based on principles of objective journalism – centered on troopers enforcing underage drinking limits and otherwise keeping people safe at Arctic Man; the story was not about troopers using unreasonable force or engaging in unfair arrests.[47]

C. The State prosecutes Bartlett.

Trooper Weight prepared a criminal complaint charging Bartlett with disorderly conduct in violation of AS 11.61.110(a)(6), stating that Bartlett had recklessly created a hazardous condition for others with no legal justification or excuse, and for resisting arrest in violation of AS 11.56.700(a). The State of Alaska's district attorney's office screened the case and assumed responsibility for the prosecution.[48] The case was prosecuted by Assistant District Attorney Ray Beard, who believes that probable cause existed to charge Bartlett with disorderly conduct and resisting

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[45] Ex. C, [Tr. 68:5-69:1-5].

[46] Ex. A, ¶ 8.

[47] Ex. I, [Tr. 24:16-21, 52:15-53:1-25].

[48] Ex. J, ¶ 5.

arrest.[49] Although Bartlett filed several motions in the criminal case, he never challenged probable cause.[50]

ADA Beard subpoenaed the KTVA edited video footage and later obtained a high-resolution portion of the video.[51] ADA Beard concluded that the video footage corroborates the troopers' observations of Bartlett's conduct, and after settlement discussions failed, the parties prepared for trial.[52] The District Attorney's Office later dismissed the criminal case due to budget problems.[53]

Applicable legal framework

A. Civil Rule 56 standards for summary judgment

Under Federal Civil Rule 56(c), summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists only if the evidence would allow a reasonable fact finder to return a verdict for the nonmoving party.[54] The mere existence of "*some* alleged factual dispute between the parties will not defeat an

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[49] Ex. J, ¶ 11.

[50] Ex. I.

[51] Ex. J, ¶¶ 6, 10.

[52] Ex. J, ¶ 8.

[53] Ex. J, ¶ 11.

[54] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

otherwise proper motion for summary judgment."[55] When considering an undisputed recording, such as a video recording, the court should view the facts in the light in which they are depicted by the recording, and should not defer to a strained interpretation of such evidence.[56] When, in cases like this, however, the court must consider an officer's on-scene perspective, the court should not conflate the officer's perspective with the camera's perspective.[57]

B. Qualified immunity analysis under 42 U.S.C. § 1983.

Qualified immunity offers complete protection to government officials sued in their individual capacities when their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known.[58] Government officials should not fear personal liability when making discretionary calls.[59] Few individuals would endure public service if they risked personal liability as a result of their official decisions and actions.[60] Qualified

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[55] *Id.* at 247-248 (emphasis in original).

[56] *Scott v. Harris*, 550 U.S. 372, 380 (2007).

[57] *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2473 (2015) (court determines objective reasonableness from the perspective of a reasonable officer on the scene and not with the 20/20 vision of hindsight.).

[58] *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

[59] *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

[60] *Malley v. Briggs*, 475 U.S. 335, 339 (1986).

immunity is thus important to "society as a whole."[61] Because of this societal purpose, a reasonable (even if mistaken) belief that an officer's conduct was legal is all that is necessary for qualified immunity.[62]

Whether a right is "clearly established" is determined by federal law.[63] The right must be established not just as a general proposition, but in a "more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."[64] It is "vital" that this inquiry be undertaken in light of the specific context of the case before the court.[65] Absent a closely corresponding factual and legal precedent, a court should only cautiously conclude that a right is "clearly

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[61] *San Francisco v. Sheehan*, 135 S.Ct. 1765, 1774 n. 3 (2015) *citing Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) and adding that "the Court often corrects lower courts when they wrongly subject individual officers to liability. See, *e.g.*, *Carroll v. Carman*, 574 U.S. ——, 135 S.Ct. 348, 190 L.Ed.2d 311 (2014) (*per curiam*); *Wood v. Moss*, 572 U.S. ——, 134 S.Ct. 2056, 188 L.Ed.2d 1039 (2014); *Plumhoff v. Rickard*, 572 U.S. ——, 134 S.Ct. 2012, 188 L.Ed.2d 1056 (2014); *Stanton v. Sims*, 571 U.S. —— , 134 S.Ct. 3, 187 L.Ed.2d 341 (2013) (*per curiam*); *Reichle v. Howards*, 566 U.S. ——, 132 S.Ct. 2088, 182 L.Ed.2d 985 (2012)."

[62] *Saucier v. Katz*, 533 U.S. 194, 206 (2001).

[63] *Davis v. Scherer*, 468 U.S. 183, 193-97 (1984).

[64] *Saucier v. Katz*, 533 U.S. at 194, 202 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

[65] *Saucier*, 533 U.S. at 201.

established."[66] A plaintiff bears the burden of proving that the specific right allegedly violated was clearly established at the time of the alleged violation.[67]

Qualified immunity analysis may be undertaken in two steps.[68] If the court finds in the first step that a constitutional violation occurred, the court must take a second step and analyze whether the law at the time of the alleged act gave the officer fair warning that the act was unconstitutional.[69] If the law was not clearly established, qualified immunity applies.[70]

Argument

I. Bartlett's false arrest claim fails because probable cause existed to arrest him.

Bartlett sues the troopers for false arrest and false imprisonment under 42 U.S.C. Section 1983. The Ninth Circuit analyzes claims for false arrest and imprisonment under the two-step qualified immunity analysis as follows: "(1) whether there was probable

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[66] *Brosseau v. Haugen*, 543 U.S. 194, 199-01 (2004)(when no factually similar Fourth Amendment case "squarely governs," law is not clearly established).

[67] *Hunter v. Bryant*, 502 U.S. 224, 233(1991); *Davis*, 468 U.S. at 197.

[68] *Pearson v. Callahan*, 129 S.Ct. 808, 823 (2009)(court has discretion to decide which step of the analysis it will address first).

[69] *Saucier, 533 U.S.* at 200-202; *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

[70] *Saucier*, 533 U.S. at 202.

cause for the arrest; and [even if not] (2) whether it is *reasonably arguable* that there was probable cause for the arrest – that is, whether reasonable officers could disagree as to the legality of the arrest such that the arresting officer is entitled to qualified immunity."[71]

Bartlett was arrested for disorderly conduct, a misdemeanor under AS 11.61.110. Troopers are authorized by AS 12.25.030(a)(1) to arrest a person who commits a crime in their presence. Because Bartlett engaged in disorderly conduct in their presence, the troopers had statutory authority to arrest him.

Numerous facts collectively known to the troopers and that cannot be credibly disputed include:

1. Troopers were investigating underage drinking at a late-night party where alcohol use was widespread;

2. Trooper Weight was alone and speaking with a minor;

3. Bartlett approached Trooper Weight;

4. Bartlett got within arm's reach of Trooper Weight;

5. Bartlett interjected himself into Trooper Weight's investigation and demanded he stop speaking with the minor;

6. Bartlett's conduct interfered with Trooper Weight's investigation;

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[71] *Rosenbaoum v. Washoe County*, 663 F.3d 1071, 1076 (9th Cir. 2011) (emphasis in original and internal citations omitted).

7. Bartlett was loud, had consumed alcohol, and possessed alcohol;

8. Bartlett's right hand was free and near Trooper Weight;

9. Trooper Weight found that reasoning with Bartlett was futile;

10. Trooper Weight felt threatened by Bartlett;

11. Sgt. Nieves saw Bartlett approach Trooper Weight and believed that Bartlett intended to fight to a lone trooper;

12. Sgt. Nieves had prior contact with Bartlett and knew him to be intoxicated, aggressive, and hostile;

13. Sgt. Nieves saw Trooper Weight move Bartlett away;

14. Arctic Man is in a remote location with thousands of campers and a limited number of first responder troopers and AST cautions troopers about increased public and officer safety risks.

Based on even a few of the above facts, probable cause existed to arrest Bartlett for disorderly conduct and also to charge him with other crimes such as harassment and assault. The test for probable cause is whether, under the totality of circumstances known to the arresting officers, a prudent officer could have believed that the suspect had probably committed a

crime.[72] Evidence does not have to be conclusive of guilt.[73] Probable cause does not demand any showing that an officer's belief is correct or more likely than not true.[74] Police officers are not required to articulate all reasons for an arrest because to require that improperly invokes the motivation of the arresting officer.[75] And probable cause may exist for an offense unrelated to the charged offenses.[76]

A. Probable cause supports Bartlett's arrest for disorderly conduct.

Disorderly conduct occurs under AS 11.61.110(a)(6) when a person recklessly creates a hazardous condition for others with no legal justification or excuse. Probable cause to arrest Bartlett existed if a reasonable officer could have believed that Bartlett had recklessly created a hazardous condition for others. While no Ninth Circuit case has been found addressing Alaska's

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[72] *See, e.g., Luchtel v. Hagemann*, 623 F.3d 975, 979 (9th Cir. 2010); *United States v. Hoyos*, 892 F.2d 1387, 1392 (9th Cir. 1989)(*citations omitted*) (recognizing probable cause may be based on the collective knowledge of all of the officers involved).

[73] *Garcia v. County of Merced*, 639 F.3d 1206, 1209 (9th Cir. 2011).

[74] *Id.; see also, Caldwell v. Porch*, 2014 WL 1921013 , *6 (C. D. Ca. 2014) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983) and citing *Maryland v. Pringle*, 540 U.S. 366 (2003)(practical considerations of everyday life control what reasonable and prudent men – not legal technicians – act).

[75] *Devenpeck v. Alford*, 543 U.S. 146, 153-155 (2004).

[76] *Id.* Additional facts relevant to the resisting arrest charge are detailed in subpart D.

disorderly conduct statute or precisely these facts, an often-cited Seventh Circuit case affirmed the district court's dismissal of false arrest and malicious prosecution claims against an officer who arrested an individual who shouted at her, waved his arms, swore, and impeded her ability to complete a tow report.[77] Relevant factors included that it was late, the officer was alone and concerned for her safety, and the individual was intoxicated.[78] The court concluded that the officer had probable cause to charge the plaintiff for obstruction and also for the uncharged crime of disorderly conduct.[79] The court, referencing decisions from other circuits, and also recognizing that qualified immunity gives officers leeway to charge for disorderly-conduct-related offenses, found that the officer's justifications for the arrest were neither 'novel' nor 'extravagant.'[80]

So too here, Bartlett yelled and impeded Trooper Weight's ability to do his investigation. Trooper Weight tried to explain what he was doing but Bartlett continued to be disruptive. Beyond that, Trooper Weight believed that Bartlett would assault him and conveyed that belief – through actions and words– to Sgt. Nieves. Troopers knew Bartlett was drunk and

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[77] *Biddle v. Martin*, 992 F.2d 673, 674 (7th Cir. 1993).

[78] *Id. See also Currier v. Baldridge*, 914 F.2d 993, 996 (7th Cir. 1990)(even service of legal papers on a police officer in a courtroom would tend to provoke a disturbance giving officer probable cause to arrest).

[79] *Id.* at 676.

[80] *Id.* (citations omitted).

they believed that he was hostile. These are neither novel nor extravagant reasons to arrest Bartlett for disorderly conduct.

B. Probable cause existed to arrest Bartlett for harassment.

Under Alaska law, a person commits second degree harassment if, with intent to harass or annoy another, that person insults, taunts, or challenges another in a manner likely to provoke an immediate violent response. See AS 11.61.120(a)(1). No dispute exists here that Bartlett approached Trooper Weight while he was interviewing a minor and that Bartlett loudly and in close proximity demanded that Trooper Weight stop interviewing the minor.[81] Trooper Weight could smell alcohol on Bartlett's breath. A prudent officer could believe that probable cause existed that Bartlett had committed harassment because he intended to annoy Trooper Weight by challenging or taunting him to stop speaking with the minor through his demands, his loud voice, and his close physical presence. Beyond those facts, Bartlett's right hand was free and near Trooper Weight and Sgt. Nieves heard Trooper Weight tell Bartlett to get back and saw him push Bartlett back.[82] An officer witnessing Trooper Weight's defensive action could reasonably conclude that Bartlett had challenged or taunted Weight, provoking the response. The question is not the troopers' or Bartlett's subjective intent, but whether a reasonable police officer could

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[81] First Amended Complaint, para. 4 "Bartlett advised Weight of his belief that Weight should not be interviewing the minor . . . ."

[82] Ex. D, [Tr. 93:18-94:9].

believe there was a fair probability that Bartlett's conduct amounted to harassment in violation of AS 11.61.120(a)(1). The answer is yes.

C. Probable cause existed to arrest Bartlett for assault.

A person commits fourth-degree assault if, by words or conduct, that person recklessly places another person in fear of imminent physical injury. AS 11.41.230(a)(3). A person commits fourth-degree assault if he recklessly by words or conduct places another in fear of imminent physical injury. Intoxicated people often act unpredictably and Trooper Weight said Bartlett's conduct caused him to fear imminent physical injury. Bartlett's friend, David Krack, agreed that a trooper could have felt threatened by Bartlett's conduct, though trying to limit that to "different circumstances."[83] But conduct in the eyes of the untrained may convey entirely different messages than it does to the experienced police officer.[84] Krack ignores the potential danger to an officer when an unknown man, reeking of beer, stands close enough to touch the officer who is at that point alone working at a crowded outdoor event. Krack's perspective was wholly different from the troopers' perspectives in other ways as well, including that Krack was, by his own admission, too drunk to safely drive.

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[83] Ex. E, [Tr. 34:23-35:3].

[84] *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1021 (9th Cir. 2009)(citing *United States v. Bernard*, 623 F.2d 551, 560 (9th Cir. 1980).

The KTVA video shows that Bartlett was near Trooper Weight and within striking distance. This could heighten the perceived threat to anyone Bartlett confronted. The high-resolution portion shows that Bartlett's right hand was free and near Trooper Weight. It would be reasonable to assume that Bartlett was right-hand dominant (he was). Bartlett outweighed the lone trooper.[85] In addition, Sgt. Nieves' observations as he approached provide an independent basis for probable cause. A reasonable officer hearing and seeing Trooper Weight's defensive response to Bartlett could reasonably conclude that Bartlett's conduct caused Trooper Weight feel threatened. Sgt. Nieves may rely on his own perceptions, which included hearing Trooper Weight order Bartlett back and then seeing Trooper Weight's defensively move Bartlett.[86] Based on the totality of circumstances, probable cause to arrest Bartlett existed under AS 11.41.230(a)(3) for placing Trooper Weight in fear of imminent physical injury.

D. Probable cause existed to arrest Bartlett's for resisting.

A person commits the crime of resisting arrest under AS 11.56.700(a)(1) when he uses force to resist an arrest by a police officer, with the intent of preventing the arrest, or under AS 11.56.700(a)(3) by using any other means that creates a substantial risk

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[85] Ex. F, [Tr. 20:6-10]; Ex. G, ¶ 4.

[86] *Moscoso v. City of New York*, 92 F.Supp.2d 310, 313 (S.D.N.Y. 2000)(officer is entitled to believe either competing plausible version of events).

of physical injury to any person.[87] Under Alaska law, the offense of resisting arrest does not hinge on defining the precise moment a defendant is under arrest.[88] And "effecting an arrest" is described as a process with a beginning and an end, which may be brief and quick or may occur over a period of time.[89] When Sgt. Nieves, a uniformed trooper, first took Bartlett's left arm and ordered him to get back and to get down, he could reasonably believe that Bartlett was aware that he was being arrested. It is not necessary that an officer expressly state the words "you are under arrest."[90] A suspect's awareness can be inferred from surrounding circumstances. In fact, Bartlett's immediate response was to attempt to pull his left arm away from Sgt. Nieves's grip.[91] That attempt supports an inference that Bartlett knew he was being arrested.[92]

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[87] Bartlett was charged under subsection (1) of the statute, but qualified immunity applies if probable cause exists for an offense unrelated to the charged offenses. *Devenpeck v. Alford*, 543 U.S. 146, 153-155 (2004).

[88] *Fallon v. State*, 221 P.3d 1016, 1019 (Alaska App. 2010).

[89] *Id.* at 1020.

[90] *Jones v. State*, 11 P.3d 998, 1001 (Alaska App. 2000); *People v. Hamm*, 6803 N.Y.S. 2d 21, 23 (A.D. 1998).

[91] Ex. H; Ex. N.

[92] *See, e.g., State v. Wilson*, 169 P.3d 1184, 1197 (N.M. App. 2007)(evidence that defendant pulled away when officer attempted to cuff him was sufficient to prove that defendant knew he was being arrested).

Trooper Weight then stepped forward and took Bartlett's right arm, which is added support for an inference that Bartlett knew that he was being arrested. The video screen shot that the ADA created for possible use in the criminal trial shows this.[93]

Bartlett admits that he refused to follow troopers' commands.[94] Not only did Bartlett refuse to follow commands to go immediately to the ground, but he also pulled and tensed his arms and body throughout the arrest.[95] Bartlett admitted that he (Bartlett) controlled the takedown.[96] As Bartlett went to his knees, he pushed his body up against the troopers' downward pressure, resisting the downward force. His head came close to the troopers' heads during the process. The troopers were "holding on for everything [they had]."[97] KTVA reporter John Thain described Bartlett's conduct as "resisting."[98]

The Alaska Court of Appeals upheld a conviction for resisting based in part on an individual bracing his knees against the wall to push his body back against

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[93] Ex. H; Ex. N.

[94] Plaintiff's Motion for Partial Summary Judgment, Dkt. 39, p. 5.

[95] Defendants incorporate any additional arguments and evidence presented in their Opposition to Plaintiff's Motion for Summary Judgment, Dkt. 44.

[96] Ex. F, [Tr. 80:18-23].

[97] Ex. D, [Tr. 77, 14-18].

[98] Ex. I, [60: 2 – 11].

the arresting officer.[99] Similarly, Alaska courts have held that an arrestee's conduct that involved "tensing of arms and pressing them against his body was not "mere non-submission" to an arrest and could constitute resisting arrest under AS 11.56.700(a)(1). Bartlett's conduct was nothing like the cowering non-submission that cannot support a resisting conviction under state law. Bartlett yelled at Sgt. Nieves, obviously pulled his arms away from the troopers, swung his arms across his body, and brought his head near theirs. Federal courts have held that even "natural" reactions to a push or shove may constitute resistance.[100] Probable cause existed to charge Bartlett with resisting arrest.[101]

E. Bartlett's conduct – not his speech – caused his arrest.

Bartlett alleges that the officers arrested him for asserting his First Amendment rights. He is wrong. Troopers arrested Bartlett based on his physical act of confronting Trooper Weight, interfering with an ongoing investigation, and for putting Trooper Weight in fear of assault. Bartlett's right hand was near

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[99] *Velarde v. State*, 353 P.3d 355, 359 (Alaska App. 2015).

[100] *Crumley v. City of St. Paul*, 324 F.3d 1003, 1008 (8th Cir. 2003 (citations omitted).

[101] Probable cause or arguable probable cause existed to charge and arrest Bartlett for harassment, disorderly conduct, and assault, for his conduct after the troopers took his arms. *See e.g*, Exh. M, Order and Opinion dated January 5, 2016, *Klecka v. Cox*, 3:14-CV-00129 JWS (arrestee charged with similar behavior during arrest was tried for disorderly conduct).

Trooper Weight and heightened Trooper Weight's concerns. Because Bartlett's conduct was criminal, any tangential communicative element does not protect the conduct from prosecution.[102] When a person's words go beyond "'verbal criticism, into the realm of interference [with an officer's performance of his or her] duty,'" the Fourth Amendment does not preclude criminal charges.[103] Moreover, an officer's subjective motivation – even if motivated by a suspect's speech – does not invalidate an objectively justifiable arrest under the Fourth Amendment. An arresting officer's state of mind is not material to the existence of probable cause, as long as his actions, viewed objectively, are justified.[104]

II. Qualified immunity bars Bartlett's false arrest claims.

If the court finds that probable cause to arrest Bartlett existed, the second step of the analysis is unnecessary. Alternatively, the court may start with

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[102] *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949)(rejecting suggestion that constitutional freedom of speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute).

[103] *Arias v. Amador*, 61 F.Supp.3d 960, 972 (9th Cir. 2014) (brackets in original) (citations include *People v. Green*, 51 Ca.App. 4th 1433, 1438 (1997) (attempts to intimidate the suspected victim into denying the commission of the offense impeded the officer's investigation and thus were not protected by the First Amendment.)).

[104] *Whren v. United States*, 517 U.S. 806, 812-13 (1996).

the second step of the analysis.[105] The second part of the qualified immunity test requires this analysis: whether an officer could reasonably but mistakenly conclude that Bartlett's arrest complied with the Fourth Amendment. An officer might be mistaken but entitled to qualified immunity for several reasons. The officer may be unaware of existing law and how it should be applied.[106] The officer may misunderstand facts about the case and assess the legality of his conduct based on those mistakes.[107] Stated another way, "[t]he issue for immunity purposes is not probable cause in fact but *arguable* probable cause."[108]

To determine whether the contours of an allegedly violated right were clear enough to provide notice to a reasonable official that he was violating that right, courts look at all available decisional law, including the law of other circuits, district courts, and state courts.[109] Unpublished decisions may "inform" the analysis.[110]

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[105] Arguments made in first step of the analysis are incorporated in the second step.

[106] *Saucier v. Katz*, 533 U.S. 194, 205 (2001); *Butz v. Economou*, 438 U.S. 478, 507 (1978) (qualified immunity protects mistakes in judgment, whether the mistake is one of fact or one of law.").

[107] *Id.*

[108] *Smithson v. Aldrich*, 235 F.3d 1058, 1062 (8th Cir. 2000).

[109] *Id.*; *Sorrels v. McKee*, 290 F.3d 965, 970-71 (9th Cir. 2002).

[110] *Sorrels* 290 F.3d at 971. Defendants interpret *Sorrels* to permit reference to relevant unpublished decisions in the second prong of the qualified immunity analysis. Otherwise, Rule 36-6 permitting citation to unpublished decisions after 2007 is followed.

Nieves and Weight are entitled to qualified immunity even if Bartlett's arrest was unreasonable and therefore unconstitutional because their belief that Bartlett's arrest was lawful was objectively reasonable – and *arguable* probable cause existed.[111] And even where officers of reasonable competence disagree on the issue, immunity should be recognized.[112]

While no Ninth Circuit cases were found addressing the exact context here, and disorderly conduct statutes vary, the Ninth Circuit affirmed a jury verdict convicting an individual whose conduct closely mirrored Bartlett's.[113] The conduct occurred in a National Park and included the individual running within a foot or two of a fisherman pointing his finger at him causing the fisherman to feel threatened.[114]

The Ninth Circuit upheld qualified immunity for a police officer's arrest of an individual who stood so close that the officer felt "flecks of spit on his face," while the suspect yelled, pointed at the officer, and waved his

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[111] *Anderson v. Creighton*, 483 U.S. 635, 644 (1987) (noting that the court has frequently observed that determining whether particular searches or seizures comport with the Fourth Amendment is difficult).

[112] *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

[113] *United States v. Dearing*, 1989 WL 37216 (C.A. 9, April 12, 1989) (reviewing 36 C.F.R. 2.34(a)(2) and determining that section 2.24(a)(2)was intended to prohibit disorderly conduct where public alarm might arise).

[114] *Id.* at * 1.

hands.[115] The court noted that the conduct interfered with the officer's duties and a "reasonable officer could have concluded [the] conduct alone constituted an 'insult, taunt, or challenge'" under the harassment statute.[116] In another case, the Ninth Circuit found probable cause to arrest individuals who had put their hands near an officer's face after refusing to disperse.[117] The court emphasized the officer's legitimate interest in maintaining order and control at a crowded outdoor festival.[118] And a federal district court in the Ninth Circuit recently held that qualified immunity applied to claims stemming from the arrest of a woman who closely approached officers.[119] And in a very factually similar case, a man was arrested and charged with disorderly conduct after he approached an officer at a fast pace, stepped towards the officer leaving little space between, resulting in the officer pushing him to create more space.[120]

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[115] *Locricchio v. Richards*, 1996 WL 478703 *3 (C.A. Aug. 22, 1996) (affirming officer's qualified immunity for arrest).

[116] *Id.*

[117] *Gomez v. City of Whittier*, 2006 WL 3456499 *1 (C.A.9, Nov. 30, 2006).

[118] *Id.*

[119] *Kalb v. City of Oceanside*, 2013 WL 1316674 *7 (S. D. Cal. March 29, 2013)(emphasizing that qualified immunity shields officials from harassment, distraction, and liability *citing Pearson v. Callahan*, 555, U.S. 223, 231 (2009)).

[120] *Portillo v. Montoya*, 170 Fed. Appx. 453, 454, 456 (9th Cir. 2006) (police officer entitled to qualified immunity in §1983 excessive

These cases are consistent with the Seventh Circuit decision *Biddle v. Martin*, which, as discussed above, involved the arrest of the individual who shouted at an officer and impeded the officer's ability to complete a report.[121] To reiterate, the court found that the officer's justifications for the arrest were neither 'novel' nor 'extravagant' and concluded that qualified immunity gives officers leeway to charge for disorderly-conduct-related offenses.[122]

In addition to authority to arrest Bartlett for disorderly conduct under (a)(6) of 11.61.110, *arguable* probable cause existed to arrest Bartlett for being unreasonably loud in violation of AS 11.61.110(a)(1), given that Trooper Weight found that reasoning with Bartlett was futile and it is undisputed that Bartlett was close and loud. The time, place, and manner that Bartlett used his loud voice – a few feet at most from Trooper Weight – interfered with Trooper Weight's investigation. Similarly, *arguable* probable cause would

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force claim where he used pepper spray on hostile suspect and struck arrestee's thigh with his flashlight during arrest).

[121] *Biddle v. Martin*, 992 F.2d 673, 674 (7th Cir. 1993); *cf*, *Crawford v. Kemp*, 139 P.3d 1249 (Alaska 2006)(Alaska Supreme Court emphasizes the importance of identifying who initiates the contact and who is in the dominant position in a disorderly conduct case involving a trooper. *Crawford* was decided when the Alaska Supreme Court applied only part of the federal qualified immunity analysis. Two years after *Crawford*, the court issued *Sheldon v. City of Ambler*, 178 P.3d 459, 464 (Alaska 2008), which recognized that its prior qualified immunity analysis failed to apply step two of the federal test. Reviewed in total, state law on disorderly conduct is not clearly established.

[122] *Id.* at 676.

support criminal charges against Bartlett for harassment or assault even if the troopers mistakenly believed that Bartlett was challenging, taunting, or about to hit Trooper Weight because those would be wholly reasonable mistakes under the circumstances here involving a drunk's out-of-the-blue confrontation of a lone trooper engaging in an investigation at a late-night crowded outdoor party.

Trooper Weight and Sgt. Nieves are entitled to qualified immunity on Bartlett's false arrest and false imprisonment claims.

III. Troopers used reasonable force to secure and arrest Bartlett.

The Fourth Amendment precludes the use of force that exceeds objective standards of reasonableness.[123] Determining whether the use of force was reasonable requires careful attention to the facts of each particular case and a careful balancing of an individual's liberty interest with the government's interest.[124] When the force used is objectively reasonable, any argument that the force used was motivated by speech fails.[125]

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[123] *Wilkins v. City of Oakland*, 350 F.3d 949, 954 (9th Cir. 2003) (citing *Graham v. Connor*, 490 U.S. 386, 388 (1989)).

[124] *Deorle v. Rutherford*, 272 F.3d 1272, 1279-81 (9th Cir. 2001).

[125] *Blackmore v. City of Phoenix*, 2005 WL 270331, *2 (9th Cir., Feb. 3, 2005) (rejecting plaintiff's argument that force used was motived by his speech because the takedown was objectively justified - plaintiff was part of a large crowd that refused to disperse).

Objective reasonableness is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.[126] "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation."[127] "Not every push or shove, even if it may seem unnecessary in the peace of the judge's chambers ... violates the Fourth Amendment."[128]

The Ninth Circuit underscores the breadth of the acceptable range of an officer's conduct in a rapidly evolving situation: "an officer cannot be expected to accurately anticipate all of the possible responses a subject may have to his commands and then tailor his actions accordingly in order for his conduct to fall in the category of what is considered reasonable."[129] In rapidly evolving situations, the Ninth Circuit has rejected arguments that officers should have used less-intrusive alternatives because that would involve the courts in "endless second-guessing."[130] Courts have recognized a "substantial government interest in

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[126] *Graham v. Connor*, 490 U.S. 386, 396 (1986).

[127] *Id.* at 396-97.

[128] *Id.* at 396.

[129] *Walker v. City of Fresno*, 2011 WL 5554305 * 11 (E.D. Cal., November 15, 2011). 1996).

[130] *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994).

promoting public safety in situations involving crowds.[131]

A. Trooper Weight moved Bartlett back to create a safer distance.

The facts in this case are appropriate for an entry of summary judgment in favor of Trooper Weight for his single push. Trooper Weight did not know Bartlett or why he was trying to stop the investigation. Because Bartlett was so close to Trooper Weight, the trooper could not timely react if Bartlett assaulted him.[132] In accordance with his training, Trooper Weight placed his open hands on Bartlett's chest and pushed him once to safely move Bartlett back and to prevent a sudden assault.[133]

Officers routinely want a person to be far enough away to minimize the officer's vulnerability.[134] When a person is close, the officer has less reaction time.[135] A reasonable officer could believe that in a situation involving an unpredictable drunk and a shortened reaction time, the drunk has the advantage.[136] Trooper Weight's push minimized Bartlett's advantage and

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[131] *Brayshaw v. City of Burlington*, 2015 WL 1523019, *9 (D. Vt., April 3, 2015).

[132] Ex. G, ¶ 4.

[133] Ex. G, ¶ 4.

[134] Ex. K, ¶ 1, report pp. 9-10.

[135] Ex. K, ¶ 1, report pp. 9.

[136] Ex. K, ¶ 1, report pp. 9.

prevented the need for the use of more force had Bartlett's conduct escalated.

The Ninth Circuit has found no Fourth Amendment violation occurred where officers pushed and chemically sprayed a female who interfered with an officer responding to a large outdoor party involving alcohol.[137] Bartlett similarly interfered with Trooper Weight's investigation and Trooper Weight quickly perceived Bartlett to be an immediate threat and used his open palms to administer a single push. No one was hurt. No weapons were used. No punching, kicking or knee strikes occurred and it is hard to conceive of a better example of restraint. Trooper Weight's contact is exactly the type of "push or shove" that does not violate the Fourth Amendment.

No cases have been found clearly establishing that a single open-handed push is too much force when used in this context. To the contrary, several decisions give police officers qualified immunity in similar circumstances. The United States Supreme Court, for example, affirmed the grant of qualified immunity where an officer shoved a suspect into a police van after the suspect approached the Vice President.[138]

In a case factually similar to Bartlett's case, a man named Portillo was charged with disorderly conduct after he approached a police officer at a fast pace and stepped towards the officer, leaving very little space

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[137] *Jackson v.City of Bremerton*, 268 F.3d 646, 649-50 (9th Cir. 2001).

[138] *Saucier*, 533 U.S. at 209.

between the two of them.[139] When the officer pushed Portillo to create more space, Portillo clenched his fists and refused to calm down.[140] The confrontation attracted a crowd and the officer was concerned that violence would erupt so he pepper sprayed Portillo.[141] The officer also struck Portillo with a flashlight several times in the thigh while making the arrest, but no serious injury was claimed. The Ninth Circuit upheld the grant of qualified immunity. Trooper Weight responded to Bartlett's proximity to him the same the way the police officer responded to Portillo – by moving him back to create space. The troopers did not have to resort to pepper spray or flashlight strikes to effect Bartlett's arrest, they merely threatened to use a taser.

Another supporting case involves a police officer who had arrested a drunken man after a bachelor party.[142] The bachelor, Sorgen, followed the officer as he escorted the arrestee. When Sorgen approached the officer within arm's distance, the officer, in an effort to move him back, pushed Sorgen on his chest using open palms. Although Sorgen moved back slightly, he stood his ground, at which point the officer used a baton and struck him three or four times on his lower body, causing him to fall. Other than bruises, Sorgen was not

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[139] *Portillo v. Montoya*, 170 Fed. Appx. 453, 454, 456 (9th Cir. 2006).

[140] *Id.* at 456.

[141] *Id.*

[142] *Sorgen v. San Francisco*, 2006 WL 2583683 (N.D. Cal).

injured. The court readily found the officer was entitled to qualified immunity.

The facts are even more compelling here. Bartlett did not steadily advance within arm's length; he immediately got that close. Trooper Weight responded exactly the way the police officer initially responded to the bachelor in *Sorgen* – by using open palms to physically move the aggressor back. Trooper Weight did not use a baton strike like the officer did in the bachelor case. Sgt. Nieves' quick response to assist Trooper Weight diffused the need for baton strikes or OC spray.

The Ninth Circuit granted two officers qualified immunity when each pushed a female at different times during an encounter.[143] The first officer used a single push to move her away when she got too close to the officer during another's arrest.[144] The second officer pushed the woman down a stairwell, causing her to fall onto one knee while he was trying to quickly escort her out of the building.[145] Again, she was not injured.[146]

Similarly, the Eighth Circuit found that an officer in the process of an investigation did not use excessive force by pushing a female attorney who approached a

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[143] *Jimenez v. City of Costa Mesa*, 174 Fed. Appx. 399 (9th Cir. 2006).

[144] *Id.* at 402 (citing *Graham v. Conner*'s "not every push" language).

[145] *Id.* at 404.

[146] *Id.* (*citing Jackson v. City of Bremerton*).

passenger in a parked vehicle to give that person a business card. Although the attorney, who was acquitted for obstruction, argued that she was unnecessarily pushed, the court found that the complete absence of injury suggests that excessive force was not used.[147]

Several single-push cases found involve women being pushed by male police officers. Even where women were involved, the male officers were entitled to qualified immunity. By contrast, Bartlett is a large heavy-set male who (like the bachelor), had been drinking all night. When pushed, Bartlett did not drop his beer and was not injured. He was simply moved back. And even where an officer reasonably, but mistakenly, believed a suspect was likely to assault him or fight back, the officer would be justified in using more force than in fact was needed.[148] Trooper Weight's controlled single push is an exemplary use of restraint under the circumstances.

B. Troopers used reasonable force to arrest Bartlett.

Upon seeing Bartlett confront Trooper Weight and Trooper Weight's defensive single push, Sgt. Nieves immediately moved in to arrest and secure Bartlett. The authority to arrest "necessarily carries with it the

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[147] *Crumley v. City of St. Paul*, 324 F.3d 1003, 1007-1008 (8th Cir. 2003); *Jennejahn v. Village of Avon*, 575 F.Supp.2d 473, 480-81 (W.D. N.Y. 2008) (grabbing, pushing, pulling, spinning, pushing during pat down of 65-year old does not rise to level of a constitutional violation).

[148] *Saucier*, 533 U.S. at 201.

right to use some degree of physical coercion or threat thereof to effect it."[149] State law expressly permits police officers to use reasonable force to complete an arrest.[150] Whether the force was reasonable requires examination of a variety of factors, including the degree of force used and the threat posed by the suspect to the officer or others.[151] An objectively reasonable officer approaching could believe – as Sgt. Nieves did – that Bartlett had threatened or harassed Trooper Weight. An objectively reasonable officer, with the knowledge Sgt. Nieves had that Bartlett was drunk and hostile, could believe officers would face an even more volatile situation if Bartlett was not quickly arrested and the situation quickly contained.

To arrest Bartlett, Sgt. Nieves took Bartlett's left arm, instructing him to back up and then to get down. Trooper Weight then stepped forward to take Bartlett's right arm and the troopers worked together to accomplish a controlled takedown. The goal of a controlled takedown (i.e., a takedown executed so as to produce only minimal injury) is to quickly gain control of an individual who poses a risk to the troopers or who resists.[152] The edited KTVA video shows Bartlett tensing his arms and yelling, albeit with Bartlett's profanities edited out. The troopers attempted to use a

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[149] *Graham v. Connor*, 490 U.S. 386, 396 (1986).

[150] Alaska Statute 11.81.370.

[151] *Graham*, 490 U.S. at 396.

[152] Ex. K, ¶1, report p. 11; *Sheridan v. Trickey*, 2010 WL 5812678, *8 (D. Oregon, Dec. 16, 2010) citing *Gregory v. County of Maui*, 523 F.3d 1103, 1106-07 (9th Cir. 2008).

leg sweep to bring Bartlett down, but that did not work immediately. During this process, Bartlett tensed his arms and pushed upward against the troopers' downward pressure and went to the ground gradually.

In *Jackson v. City of Bremerton*, police encountered an outdoor crowd and a defiant arrestee.[153] Officers were granted summary judgment when they allegedly struck, tackled, and restrained the plaintiff during handcuffing. Officers also used a "chemical irritant" and roughly pulled the arrestee to her feet. The court emphasized that qualified immunity is appropriate for tense circumstances in which officers must make on-the-spot judgment calls.[154] In *Jackson*, the alleged injuries were minor. Here, Bartlett had no injuries – zero. And unlike the *Jackson* scenario, no "chemical irritant" was used. Like *Jackson*, this case involved on-the-spot judgment calls.[155]

Even if this Court finds that the minimal force used to arrest Bartlett violated the Fourth Amendment, it was not clearly established that the troopers' actions in restraining Bartlett and safely taking him to the ground in this context violated Bartlett's constitutional rights. *Jackson*, which involved the use of more force, supports qualified immunity here.

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[153] 268 F.3d 646, 652 (9th Cir. 2001).

[154] *Id.* at 651.

[155] The KTVA reporter who filmed Bartlett's arrest said that, based on what he observed, his new story focus was that troopers were working to keep people safe – not that troopers had used excessive force. Ex. I, [Tr. 24:16-21, 53:8-25].

Similarly, qualified immunity protected a police officer who used more force to arrest a photojournalist who illegally crossed a barrier tape.[156] The officer forced the journalist to the ground twice while making the arrest.[157] Qualified immunity also protected an officer's take-down of an individual arrested for wrongful possession of a driver's license when the individual interfered with a valid investigation[158] And an officer who used pepper spray and flashlight strikes on a man who aggressively approached him and resisted arrest was entitled to qualified immunity.[159]

Bartlett undisputedly interfered with Trooper Weight's investigation. And Trooper Weight believed an assault was imminent. Thus, troopers were justified under the Fourth Amendment to use more force than they did to make Bartlett's arrest. Bartlett's lack of injury signals that the force used was reasonable.[160] Courts addressing similar takedowns that resulted in actual injuries have applied qualified immunity for

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[156] *Liiv v. City of Couer D'alene*, 2005 WL 902052 (C.A. 9 Idaho).

[157] *Id.* at *2.

[158] *Bennett v. Gow*, 2009 WL 2906007 (C.A.9 Wash).

[159] *Portillo*, 170 Fed. Appx. at 456.

[160] *Crumley*, 324 F.3d at 1008 (officer pushed or shoved woman multiple times did not use excessive force; absence of injury suggests force used was reasonable).

reasonable mistakes of fact.[161] These include the mistaken belief that a suspect is likely to fight back necessitating a take down and the mistaken belief that a takedown could be executed in a way that minimizes harm.[162] The troopers' actions here were a model of restraint and no one was hurt; they are entitled to qualified immunity and summary judgment on Bartlett's use of force claim.

Finally, to the extent that Bartlett alleges excessive force was used in handcuffing him, that claim also fails. The troopers do not recall whether they cuffed Bartlett. If they did, they used a standard cuffing technique and at no time did Bartlett complain or appear uncomfortable[163] In fact, Bartlett testified that his cuffs did not become uncomfortable until he was in the holding tent.[164] When Bartlett asked the Judicial Services Officer to uncuff him, the officer immediately moved Bartlett's hands to his front.[165] Up to that point Bartlett had not told any other trooper that his cuffs hurt.[166] No medical attention was requested or

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[161] *Brayshaw v. City of Burlington*, 2015 WL 1523019 (D. Vt.)(analyzing takedown of drunk after his removal from line at hot dog stand on New Year's Eve).

[162] *Id.*

[163] Ex. A, ¶ 7; Ex. G, ¶ 11.

[164] Ex. F, [Tr. 31: 3- 10].

[165] Ex. F, [Tr. 31: 11 – 14].

[166] Ex. F, [Tr. 30: 13-25, 31: 1-4].

required.[167] Ninth Circuit law precludes excessive force claims for tight handcuffs under these circumstances.[168]

IV. Bartlett's malicious prosecution claim is barred.

A. Probable cause and no Fourth Amendment seizure preclude claims.

Although Bartlett alleges that he was maliciously charged and prosecuted in violation of numerous constitutional provisions,[169] the Supreme Court has stated that the appropriate vehicle for a § 1983 malicious prosecution claim is the Fourth Amendment.[170] The Ninth Circuit recognizes that a § 1983 malicious prosecution claim is a hybrid claim involving state law elements of malicious prosecution and the Fourth Amendment.[171] Under Alaska law, the elements of a cause of action for malicious prosecution are that the proceeding (1) was initiated with malice, (2) lacked probable cause, and (3) terminated in favor

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[167] Ex. F, [Tr. 31: 15- 24].

[168] *See e.g., Hupp v. City of Walnut Creek*, 389 F.Supp.2d 1229, 1232-33 (N.D. Cal. 2005) (summarizing Ninth Circuit law and rejecting a tight handcuffing claim where plaintiff failed to demonstrate that complaints were ignored).

[169] First Amended Complaint, ¶ 23.

[170] *Albright v. Oliver*, 510 U.S. 266, 274 (1994); *see also, Sanders v. San Diego*, 93 F.3d 1423 (9th Cir. 1996) (in the criminal context, the Fourth Amendment provides the standard for determining whether due process has been met) (*citations omitted*).

[171] *Id.*

of plaintiff.[172] Troopers are entitled to qualified immunity for Bartlett's § 1983 malicious prosecution claim because they had probable cause to charge Bartlett with various crimes identified above or arguable probable cause, which will not be repeated here. Beyond those arguments, for a state actor to violate the Fourth Amendment by initiating a prosecution, the criminal charges must have caused some deprivation of liberty consistent with the concept of a seizure.[173] Although Bartlett was "seized" for a few hours as a part of his arrest, he was released thereafter on bail conditions.[174]

After his release from Arctic Man, Bartlett asserts a claim for malicious prosecution claim for the months-long prosecution undertaken by the state.[175] But Bartlett's bail conditions do not fit within the Fourth Amendment's definition of a seizure. The Supreme Court has said "[F]rom the time of the founding to the present, the word 'seizure' [under the Fourth Amendment] has meant a 'taking possession.'"[176] A Fourth Amendment seizure "requires an intentional

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[173] *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988).

[173] *Britton v. Maloney*, 196 F.3d 24, 27 (1st Cir. 1999), *cert. denied* 530 U.S. 1204 (2000) (*citations omitted*).

[174] Ex. L, Response to RFA No. 14; Ex. O. p. 2.

[175] First Amended Complaint, ¶¶ 12, 23.

[176] *California v. Hodari D.*, 499 U.S. 621 (1991) (holding that officer's pursuit of suspect was not a seizure until suspect was tackled); *see Id.* at 629 (Stevens, J., dissenting) (characterizing as "narrow" the Court's seizure definition).

acquisition of physical control."[177] Supreme Court jurisprudence on what constitutes a seizure has typically involved almost complete restriction of movement either physically or a close connection (both temporally and spatially) between the show of authority and compliance.[178] The Court has stated that "[a] seizure is a single act, and not a continual fact."[179] In *Albright v. Oliver*, the Supreme Court left open the question of whether pretrial conditions of release are a Fourth Amendment seizure.[180] Although the concurring opinion in *Albright* suggested that a defendant released prior to trial on the condition that he later appear before the courts may still be seized within the meaning of the Fourth Amendment, courts have split on the issue.[181]

The Ninth Circuit has held that a person is not seized under the Fourth Amendment when he or she is required, by conditions of pretrial release, to obtain permission of the court before leaving the state and to

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[177] *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989).

[178] *See, e.g., Brower v. County of Inyo*, *489 U.S.* at *597*(a Fourth Amendment seizure occurs only when the governmental intentionally terminates of freedom of movement).

[179] *California v. Hodari, D.*, 499 U.S. at 625 (*citation omitted*).

[180] *Albright v. Oliver*, 510 U.S. 266 (1994) (the Court commented at p. 271 that Albright's voluntary surrender to an arrest warrant constituted a seizure, but Albright did not raise the Fourth Amendment and therefore further analysis was not undertaken).

[181] *Id.* at 279 (Ginsberg, J., concurring); *see*, e.g., *Nieves v. McSweeney*, 241 F.3d 46, 55-56 (1st Cir. 2001) (noting several circuits have rejected Justice Ginsberg's theory).

make court appearances."[182] Here, Bartlett's release conditions required only that he obtain written permission from the court before leaving, obey all court orders and federal, state, and local laws, appear in court when ordered, maintain contact with an attorney if he has one, notify his attorney of address changes, and not consume alcoholic beverages.[183] Bartlett only appeared at a few hearings telephonically. To the extent that Bartlett's claims are that his release conditions or the requirement to appear in court and defend the charges infringed on his liberty, such requirements do not rise to the level of a Fourth Amendment seizure.

B. The prosecutor's work on the criminal case immunizes defendants.

Prosecutors have absolute immunity for claims of malicious prosecution. The underlying principle for this immunity is the well-settled belief that prosecutors cannot be held liable for acts related to the judicial process, even if illegal and intentionally harmful, because of the extreme cost to society that would flow

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[182] *Karam v. City of Burbank*, 352 F.3d 1188, 1193 (9th Cir. 2003). See also *Palmer v. Savona*, 2013 WL 4478945 at * 12 -13 (n. 193) (alleged Fourth Amendment violations dismissed based on *Karam* where a summons to appear subject to de minimus release restrictions were imposed); *Fenters v. Chevron*, 2010 WL 5477710 at *21 – 23 (E.D. Ca. Dec. 30, 2010) (dismissing false arrest claim where court appearance requirements do not constitute a seizure under *Karam*).

[183] Ex. O, p. 2.

from subjecting prosecutors to civil liability.[184] The touchstone of absolute prosecutorial immunity developed by several United States Supreme Court cases is whether there is a "functional tie to the judicial process."[185] In the seminal case, *Imbler v. Pachtman*, the Supreme Court held that prosecutors are entitled to absolute immunity for the performance of functions that are "intimately associated with the judicial phase of the criminal process."[186] *Imbler* held the prosecutor immune for acts relating to the knowing use of false testimony and the intentional suppression of exculpatory evidence.

Police officers are entitled to absolute immunity from suits for malicious prosecution when a prosecutor initiates or assumes responsibility for the case prosecution. The "[f]iling of a criminal complaint immunizes investigating officers ... from damages suffered thereafter because it is presumed that the prosecutor filing the complaint exercised independent judgment in determining that probable cause for an accused's arrest exists at the time."[187] The Ninth Circuit reaffirmed this principle in a malicious prosecution claim against an investigating officer.[188]

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[184] *Gregoire v. Biddle*, 177 F.2d 579 (2nd Cir. 1949).

[185] *Buckley v Fitzsimmons*, 509 U.S. 259, 277 (1993).

[186] 424 U.S. 409, 430 (1976).

[187] *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981), *see also*, *Smiddy v. Varney*, 803 F.2d 1469, 1471 (9th Cir. 1986)(*Smiddy II*), *modified on other grounds*, 811 F.2d 504 (9th Cir. 1987).

[188] *Poppell v. City of San Diego*, 149 F.3d 951, 962 (9th Cir. 1998).

The court explained that the exercise of "prosecutorial judgment will usually insulate investigating officers from liability."[189] "It would be ironic if the presumably independent decisions of [the] immune [prosecutor] would automatically result in enhanced liability for the non-immune police officers."[190] Absolute immunity can only be extinguished when, for example, the police officers exert undue influence to cause the prosecutor to act contrary to his or her independent judgment, or when the officers present knowingly false material evidence to an unwitting prosecutor.[191] It takes more than a plaintiff's account of events to overcome the presumption.[192] And where the prosecutor herself attests that her decision was made independently, that should be considered.[193] Where a prosecutor gathers independent information, her independence is fortified.[194]

Here, the troopers referred Bartlett's case to the district attorney's office. After conducting an initial review of Bartlett's case, Assistant District Attorney

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[189] *Id, citing Smiddy II*, 803 F.2d at 1471.

[190] *Id.*, citing *Smiddy II*, at 803 F.2d at 1472.

[191] *Smiddy*, 665 F.2d at 266-67.

[192] *Newman v. County of Orange*, 457 F.3d 991, 994 (9th Cir. 2006).

[193] *Dupris v. McDonald*, 2012 WL 210722, *8 (D. Arizona January 24, 2012).

[194] *Lasic v. Moreno*, 504 F.Supp.2d 917, 921- 923 (E.D. Ca. 2007).

Raymond Beard accepted it for prosecution.[195] ADA Beard understood that Bartlett claimed that Trooper Weight assaulted him and then covered up that alleged assault by arresting Bartlett.[196] As explained in ADA Beard's affidavit he was not persuaded by Bartlett's arguments.[197] The troopers fully cooperated with ADA Beard and his office and provided information requested.[198] ADA Beard directed the criminal prosecution, which included responding to defense motions, responding to requests for video footage, obtaining that footage, and negotiating with Bartlett's counsel.[199] In fact, ADA Beard has an extensive background in law enforcement and he believes that the KTVA video that he obtained corroborates the troopers.[200]

ADA Beard believes that probable cause existed to charge and prosecute Bartlett for disorderly conduct, resisting arrest, and also with "fear assault" and attempted assault.[201] As the trial date neared, the state's budget issues became a paramount

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[195] Ex. J, ¶ 5.

[196] Ex. J, ¶ 7.

[197] Ex. J, ¶ 7.

[198] Ex. J, ¶¶ 4 - 6.

[199] Ex. J, ¶¶ 6 - 10.

[200] Ex. J, ¶¶ 3, 6.

[201] Ex. J, ¶ 11.

consideration. Ultimately, Bartlett's case was dismissed to avoid travel costs.[202]

In sum, based on the principles enunciated by the Ninth Circuit, ADA Beard's exercise of "prosecutorial judgment" in maintaining the criminal prosecution insulates the investigating officers -Sgt. Nieves and Trooper Weight- and they are entitled to the same absolute immunity that covers the prosecutor. Accordingly, the malicious prosecution claims must be dismissed.

V. Bartlett has no viable due process claim.

Bartlett alleges his right to due process was violated because of the way the troopers investigated his crimes, namely he argues troopers should have seized the KTVA video sooner. Negligent investigation of a crime, however, is not a constitutional claim.[203] And, in the Ninth Circuit, a due process claim against a police officer requires "detentions of (1) unusual length,

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[202] Ex. J, ¶11.

[203] See e.g., *Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir.1985) ("[W]e can find no instance where the courts have recognized inadequate investigation alone as sufficient to state a civil rights claim); *Page v. Stanley*, 2013 WL 2456798, at *8–9 (C.D.Cal. June 5, 2013) (dismissing § 1983 claim that officers failed to conduct thorough investigation of plaintiff's complaints because plaintiff "had no constitutional right to *any* investigation of his citizen's complaint, much less a 'thorough' investigation or a particular outcome"); *Frisch v. City of Eugene*, 2010 WL 686754, at *3 (D. Oregon Feb. 4, 2010)(no statutory or common law right, much less a constitutional right to an investigation). See also, *Carter v. State*, 356 P.3d 299 (Alaska App. 2015) (government has no duty to collect third-party video).

(2) caused by the investigating officers' failure to disclose highly significant exculpatory evidence to prosecutors, and (3) due to conduct that is culpable in that the officers understood the risk to the plaintiff's rights from withholding the information or were completely indifferent to those risks."[204] These factors are to be narrowly applied.[205]

Bartlett was held only a few hours at Arctic Man and released on bail. He was not detained after that.[206] The absence of a post-arrest detention precludes a "due process" claim. Moreover, no "highly significant exculpatory evidence" exists. The KTVA video supports the charges brought. Further, the video was produced in the criminal case, which cures any alleged problem and bars a due process claim.[207]

VI. Conspiracy claims should be dismissed.

Bartlett amended his complaint to assert a conspiracy claim under 42 U. S. C. § 1985, which requires allegations of: 1) a conspiracy, 2) for the purpose of depriving a person or class of equal protection or privileges and immunities; 3) an act in furtherance thereof; and 4) injury or deprivation of

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[204] *Tatum v. Moody*, 768 F.3d 806, 819-20 (9th Cir. 2014).

[205] *Id.* at 819.

[206] Ex. L.

[207] *U.S. v. Gamez-Orduno*, 235 F.3d 453, 461-462 (9th Cir. 2000)(*Brady* violation may be cured by belated disclosure)

rights.[208] The equal protection and privilege and immunities language requires a racial or other class-based discriminatory animus behind the conspiracy.[209] No § 1985(3) conspiracy can be made here because no evidence of a discriminatory racial or class-based animus exists.

VII. No evidence of punitive damages exists.

In light of the troopers' operational directives to protect campers and themselves at Arctic Man, the late party involving widespread alcohol use, and Alaska's endemic problem with alcohol and its impacts on the vulnerable, including minors, no evidence exists to support punitive damages here. No objective evidence of malice exists. Bartlett interfered with an ongoing investigation in a time, place, and manner that drew red flags for the troopers who were more than 50 feet apart at the time. First acting independently and then together they promptly and efficiently arrested Bartlett. No one was hurt. Justice and common sense require dismissal of Bartlett's punitive damage claims.

VIII. Conclusion.

Defendants Nieves' and Weight's actions were consistent with the Fourth Amendment. If they were mistaken about facts or law, those mistakes were

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[208] *Griffin v. Breckenridge*, 403 U.S. 88, 102-103 (1971). Bartlett does not specify in his first amended complaint which subsection under § 1985 he alleges was violated. Subsection (3), however, appears to be the only relevant subsection.

[209] *MacEchern v. City of Manhattan Beach*, 623 F.Supp.2d 1092, 1109 (C. D. Ca. 2009).

reasonable and they are entitled to immunity. Qualified immunity is intended to protect all but the most incompetent officers and those who clearly violate the law. These troopers are not the least bit incompetent – to the contrary, they are excellent troopers whose prompt, decisive actions prevented injuries and are models of restraint. Bartlett's claims should be dismissed in their entirety.

DATED: January 29, 2016.

CRAIG W. RICHARDS
ATTORNEY GENERAL

By: /s/Stephanie Galbraith Moore
Stephanie Galbraith Moore
Senior Assistant Attorney General
Alaska Bar No. 8911063
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Attorney for Defendants Luis A. Nieves and Bryce L. Weight

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Exhibit A

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CIVIL ACTION NO. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

DECLARATION OF LUIS A. NIEVES

1. I have over 20 years of law enforcement experience, including law enforcement training with the US Coast Guard, which includes acting as a use of force instructor. I have been with the Alaska State Troopers since 2006 and I have been a Sergeant since 2012. I have worked in various capacities, including DUI enforcement, ABI, and child abuse investigations, and I have worked as a trooper in the bush and as a VPSO oversight trooper. I have completed the homicide investigations course. I have worked as a Sergeant for the Statewide Crisis Negotiations Team. I have worked as a Case Officer for officer involved shootings. I have worked in recruiting and I am currently a Sergeant for

Anchorage Judicial Services at the Nesbett Courthouse. I am a Council member of the Alaska Police Standards Council, and I was very recently elected Vice Chairman of the Council. My deposition has been taken in this case and this declaration has been requested by counsel to supplement that in support of a motion for summary judgment.

2. Thousands of people attend the annual Arctic Man event and the 2014 KTVA report may well be correct that it becomes the "fourth largest city in Alaska" for three days. I have worked at several Arctic Man events and I am familiar with the widespread alcohol use and high levels of intoxication that occur at the event. Camper behavior at night creates significant public safety concerns because campers congregate to drink and party, often all night long and into the next morning. The troopers' mission is to work proactively to prevent significant public safety problems. We remind people to turn on headlights and to slow down, for example. We keep an eye on intoxicated drivers and pedestrians. Prevention of underage drinking is also a priority. The remote location and limited number of troopers and medical personnel increase the public safety risk, including the risk to troopers. Troopers are encouraged to pair up everywhere they go, and pairing us is mandated when troopers enter the beer tent.

3. I was the supervising trooper on the second shift on April 13, 2014, at Arctic Man 2014. On April 13, 2014, I heard some trooper units reporting that minors were observed consuming alcohol, so I went to that location to assist. When I arrived, a large party was underway and I was informed that troopers on scene had contacted several minors and cited them for

underage drinking. I sought to find the source of the alcohol, and I found a beer keg outside of centrally located RV. The keg needed to be moved inside the RV to keep juveniles from accessing the beer. That is also the area where I first encountered Mr. Bartlett. Although he was older than others in the area, I determined that he was not the owner of the RV because I saw that he was wearing a backpack. As I said in my deposition and reports, Bartlett began shouting to the RV owners that they didn't have to let me in or talk with me. During my contact with Bartlett near the RV, I quickly determined that any further interaction with Bartlett could escalate. I believed that Bartlett was highly intoxicated and hostile to troopers. I left the area and walked toward my trooper vehicle.

4. I do not know exactly what the KTVA reporter filmed during my contacts near the RV. I was not focusing on the reporter, who accompanied me for part of my shift. I have no independent recollection of where the reporter was when I was near or inside the RV or what he was doing at the time. I have seen the KTVA video that aired and it shows me at the door of the RV requesting that the beer be moved inside so that juveniles would not be able to access it.

5. From at least 50 feet away as I was entering my vehicle to leave, I saw Bartlett charge toward Trooper Weight and a teen. It appeared to me that Bartlett was taking a fight to a lone trooper. I immediately went to assist. I did not focus on where the reporter was or even if he was with me. Just as I approached, I heard Trooper Weight order Bartlett back and then saw him move Bartlett back. I believed that Bartlett was harassing or threatening Trooper

Weight and that Trooper Weight considered Bartlett to be a threat. It was reasonable in my professional opinion for Trooper Weight to use a single push to move Bartlett back under the circumstances, particularly in light of the potential threat Bartlett posed by being so close and intoxicated. In my experience, including at Arctic Man, intoxicated people are unpredictable.

6. Based on the totality of the circumstances, including my prior contact with Bartlett by the RV, Bartlett's aggressive charge toward Trooper Weight and his stance, and prior Arctic Man arrests with nearby crowds, I decided to arrest Bartlett and to secure him to keep him from physically retaliating. I believed then, and I continue to believe that we had probable cause to arrest Russell Bartlett. I took hold of Bartlett's left arm and repeatedly ordered him to get back and to get on the ground. Bartlett refused to go down on his own. The video at about 2:12 shows Bartlett yelling and resisting. A true and accurate frame shot captured by ADA Ray Beard at about 2:12 is marked attached as Attachment 4, SOA 526.

7. I do not recall whether I assisted in handcuffing Mr. Bartlett. If I did, I would have used standard cuffing technique. At no time during my contact with Mr. Bartlett did he complain that the cuffs were on too tightly or uncomfortable in any way. Nor did Mr. Bartlett request me or any other trooper present at the party location to loosen or adjust his cuffs.

8. Shortly after Bartlett was secured, I informed him that he was going to jail for harassing an officer. At some point shortly after he was secured, I also contacted dispatch and reported that Bartlett was

arrested for challenging a trooper to a fight. time I contacted Trooper Gabe Rich and Trooper Ryan Mau and ordered them to come immediately to the area to assist as I was concerned about crowd control.

9. A true and accurate copy of the supplemental report I prepared is attached hereto as Attachment 1. A true and accurate copy of my April 16, 2014, comments on the use of force report regarding lack of trooper audio due to "poor design" is attached hereto as Attachment 2. My response was directed to Lt. Piscoya's question whether audio existed. I understood this to mean trooper audio. Lt. Piscoya is the overall commanding officer for Arctic Man and had directed me to permit the KTVA reporter to accompany me for part of my shift.

10. When the DA's office contacted me by email in July 2014, I informed them of the presence of a TV news reporter, although I referred to Channel 2 instead of Channel 11. Trooper Miner also responded to the email and cc' d me saying the reporter was from either KTUU or KTVA. A true and accurate copy of the emails exchanged between us and paralegal Sherese Holladay are attached hereto as Attachment 3. This issue came up again in December. At ADA Beard's direction, I served a records subpoena on KTVA for the video.

11. I have seen the KTVA video since Bartlett's arrest. It does not show Bartlett walking toward Trooper Weight. And it only shows a small portion of my walk toward Trooper Weight, the teen, and Bartlett. It does not show my prior contact with Bartlett by the RV. The view of the scene that is depicted is not from the same perspective that I had on the scene, which includes not only what I could see,

hear, and sense, but also my knowledge of Bartlett based on my contact with him moments before he approached Trooper Weight.

12. At no time did I act with malice toward Russell Bartlett. I had no prior contact with Bartlett before I encountered him near the RV. My actions were based on my professional observations at the scene and were based on Bartlett's conduct. Although Bartlett was arguably disorderly by the RV, I did not arrest him then. In fact, we try to avoid arresting people at Arctic Man, which why I said "let's try not to pick up any more cases." This statement can be heard at the end of the KTVA video.

The above twelve paragraphs complete this declaration and I declare under penalty of perjury that the foregoing is true and correct.

/s/Luis A. Nieves
Luis A. Nieves

JA 145

Exhibit A Attachment 1

SOA 0153 - SOA 0157

Alaska Department of Public Safety

Incident Report

[SEAL]

Incident: AK14025280

Incident Type:

Disorderly Conduct [90C]

Incident time:

04/13/2014 01:57 - 04/13/2014 02:42

Reported time:

04/13/2014 01:57

Incident location:

210 RICHARDSON HIGHWAY, PAXSON, Unorganized Borough AK USA 99737 (Beat/zone: HHHH)

Incident status:

Closed by arrest

Summary:

On 4/13/14 at approximately 0150 hours, Alaska State Troopers contacted a large party in the Artic Man event area to investigate minor consuming alcohol. At approximately 0157 hours Russell P. Bartlett attempted to stop Troopers

from investigating and created a hazardous condition. When being placed under arrest for disorderly conduct Russell resisted with force. Russell was charged with DC and resisting arrest.

Incident Activities/Offenses

- Disorderly Conduct - AS11.61.110(a)(6) - Recklessly Creates Hazardous Condition For Others with No Legal Justification or Excuse
- Resisting Arrest - AS11.56.700(a)(3) - Knowingly Resists Arrest by Any Means that Creates a Substantial Risk of Physical Injury to Any Person

Involved Persons

SADLER, JERRY LEE

Classification: Interview; Owner

SID: [redacted]

Gender: Male

Height: 6'2"

Race: White

DL: [redacted]

DOB: [redacted]

Weight: 190lb

Hair Color: Brown

Build:

Eye Color: Blue

Address: [redacted]

E-mail:

BARTLETT, RUSSELL PAUL

Classification: Arrested; Charged

SID: AK6250956

Gender: Male

Height: 5'9"

Race: White

DL: 6250956 AK

DOB: [redacted]/1969

Weight: 235lb

Hair Color: Brown

Build:

Eye Color: Green

Address: 4040 OLD WOOD ROAD, ESTER, Fairbanks North Star Borough
AK USA 99709 (Beat/zone: HJBF)

E-mail:

Telephone: (Cellular phone) (907) 347-1421

Involved Addresses

- 210 RICHARDSON HIGHWAY / Incident location / PAXSON, Alaska, USA 99737 (Beat/zone: HHHH)

Related Incidents

- Same event / AK14017152 / Miscellaneous / 03/11/2014 15:57

Involved Officers

- Assisting officer / #WSK0KIRKSEY, WALLACE S / Assisting officer
- Assisting officer / #RLM2MAU, RYAN L / Assisting officer
- Assisting unit / #GLR0RICH, GABRIEL L / Assisting unit
- Assisting officer / #NCH0HAYES, NICOLAS C / Assisting officer
- Assisting officer / #PND0DUCE, P NATHAN / Assisting officer
- Assisting officer / #JLC0CARSON, JESSIE L / Assisting officer
- Assisting officer / #GDY0YOUNG, GORDON D / Assisting officer
- Reporting unit / #PALTAST PALMER BHP / Reporting unit
- Assisting officer / #JDP2PUGH, JASON D / Assisting officer
- Assisting officer / #LAN1NIEVES, LUIS A / Assisting officer

- **Reporting officer / #BLW1WEIGHT, BRYCE L / Reporting officer**
- **Call taker / #OPSFAST FAIRBANKS DISPATCH / Call taker**

Reports

Arrest report

Subject:

BARTLETT, RUSSELL PAUL / Arrested; Charged / DOB: [redacted]/1969 (44) Gender: Male (4040 OLD WOOD ROAD, ESTER, Fairbanks North Star Borough AK USA 99709 (Beat/zone: HJBF)) DL:AK:6250956

Author:

#BLW1 WEIGHT, B.

Report time:

04/13/2014 01:57

Charges:

(1) AS11.61.110(a)(6) Recklessly Creates Hazardous Condition For Others with No Legal Justification or Excuse (Not Applicable)

(2) AS11.56.700(a)(3) Knowingly Resists Arrest by Any Means that Creates a Substantial Risk of Physical Injury to Any Person (Not Applicable)

General report

Author: #BLW1 WEIGHT, B.

Report time: 04/13/2014 04:16

Narrative:

On 4/13/14 at approximately 0125 hours I contacted a large party at the Artic Man event. From the patrol vehicle I observed several people in the area who appeared to be minors. I also observed the majority of the people at the party had alcoholic drinks in their hands. I contacted the party to investigate minors consuming alcohol. As I approached, several people departed the area.

I contacted 3 male juveniles who had been consuming alcohol. I referred them to Trp. Miner for issuance of minor consuming alcohol citations. I contacted a fourth male juvenile in the area and asked him to step to the side of the party so I could talk with him. The juvenile complied, and was very cooperative. As I was investigating, **Russell P. Bartlett AK6250956** approached me in an aggressive manner. He walked straight towards me and had a look of anger on his face. Russell put his arm between me and the juvenile and informed me that I could not speak with the juvenile. He told me that I had no business talking with the juvenile and I needed to leave him alone. I attempted to explain to Russell what I was doing and why I was speaking with the 16 year old (investigating minors consuming alcohol at the party). Russell continued to get in between me and the juvenile, and continued to be hostile and aggressive. I smelled the

strong odor of alcoholic beverage coming from Russell's breath and Russell was slurring his speech.

Russell stepped forward to where his chest was almost touching mine, and his face very close to mine. I took this action by Russell to be combative in nature. I placed both hands on Russell's chest and pushed him away from me. Russell came at me again. Sgt. Nieves and I attempted to gain control of Russell. Sgt. Nieves informed Russell he was under arrest and ordered Russell to the ground. Russell did not comply. I performed a leg sweep on Russell and Russell fell forward, catching himself with his hands. Russell continued to resist and struggle as Sgt. Nieves and I attempted to gain control of his arms and place him in hand cuffs. Russell attempted to 'head-butt' Sgt. Nieves, but was unsuccessful. Sgt. Nieves verbally threatened the use of a taser, and Russell went prone and placed his arms behind his back. Russell was placed into handcuffs. Russell was transported to the Artic Man holding tent on the charges of disorderly conduct and resisting arrest.

Per the Glennallen bail schedule, bail was set at $500.

Supplementary report

Author: #LAN1 NIEVES, L.

Report time:

Remarks:

Narrative:

On 4/13/14 at approximately 0135 hours, I arrived at a large party located at the end of the "runway" during

the Arctic Man event, to assist Trooper Miner and Trooper Weight with an investigation involving minors consuming alcohol. I contacted the owner of the camp site, Jerry Lee Sadler [redacted], in front of his RV. Also present was Russell P. Bartlett **AK6250956**. Bartlett began to shout to Sadler and the occupants of the RV that they did not have to speak with me or allow me in the RV. After speaking with Sadler, advising him to secure his alcohol from random juveniles showing up on his camp site, I spoke with Bartlett, offering to explain why Troopers were present. Bartlett advised me he did not want to speak with me and then told me to leave the camp site. I departed the campsite, but remained nearby to assist Trooper Miner and Trooper Weight with crowd control.

I observed Bartlett walking towards Trooper Weight, who was speaking with a juvenile near the campsite. Bartlett began to shout at Trooper Weight that he was not allowed to speak with the juvenile. Trooper Weight explained that he was conducting an investigation involving minors consuming alcohol. Bartlett got within an arm's length of Trooper Weight, shouting that he was not allowed to speak with the juvenile. Bartlett began to close Trooper Weight, resulting in Trooper Weight pushing him away. I immediately grabbed a hold of Bartlett and advised him he was under arrest for disorderly conduct. Bartlett clenched his right fist as I grabbed his left arm, shouting no. I advised him again that he was under arrest, as he pulled away from me, as he swung his right fist towards me. Trooper Weight assisted me in getting Bartlett into a prone position, as he continued to fight with us until Trooper Miner arrived and I threatened to deploy the Taser. Bartlett was subsequently

handcuffed and transported to the Arctic Man command post by Trooper Weight on the charges of Disorderly Conduct and Resisting Arrest. Sadler approached me in front of his camp site and asked who Bartlett was. Sadler stated that he did not know Bartlett and had not invited him to his camp site.

Printed: 04/25/2014 15:44 by BLW1

Exhibit A Attachment 2

SOA 0433 - SOA 0436

Use of force IA No: UOF2014-0069 Received: Apr 15, 2014

Case No: AK14025280

Type of service being performed at time of incident: Arrest

Reason for use-of-force: Officer Safety

Officer assessment of citizen condition: Alcohol

Citizen was injured: No

Citizen was taken to hospital: No

Citizen was charged/arrested in relation to the incident: YesOfficer was injured: No

Officer was taken to hospital: No

Distance Officer was from Involved Citizen: 1 feet to 3 feet

Involved Citizen Build: Large

Involved Citizen Height: 5'7" to 5'9"

Involved citizen:

Russell Paul Bartlett

Resistance(s):

Non-Compliance

Charges against citizen in relation to the incident:

Misdemeanor

Linked address(s):
Home Address: 4040 Old Wood Road Ester AK 99709

Linked phone(s):
Home Phone: (907) 347-1421

Officers involved:

Trooper Bryce L Weight [BLW1/308024]

Officer current info:

Division: State Troopers
Bureau:
Section:

Snapshot - officer information at time of incident:

Badge/ID no: BLW1
Division: State Troopers
Bureau:
Section:
Detachment: B
Post: Palmer
Rank/title: Trooper
Age: Years of employment: Years with unit:
Off duty: Off duty employed:

Use(s) Of Force:

Unarmed: Effective

Sergeant Luis A Nieves [LAN1/305069]

Officer current info:

Division: State Troopers
Bureau:
Section: Recruitment

Snapshot - officer information at time of incident:

Badge/ID no: LAN1
Division: State Troopers
Bureau:
Section: Recruitment
Detachment: HQ
Post: Anchorage
Rank/title: Sergeant
Age: 44 Years of employment: 7 Years with unit:
Off duty: Off duty employed:

Use(s) Of Force:

Unarmed: Effective

Summary:

On 4/13/14 at approximately 0150 hours, I contacted a large party in the Arctic Man event area to investigate minors consuming alcohol. At approximately 0157 hours Russell P. Bartlett attempted to stop me from my investigation. I was contacting a 16 year old male. I asked the 16 year old to step to the side of the party so I could speak with him (music was very loud and I smelled alcohol). Once off to the side Russell Bartlett approached me in a hostile manner. I observed him walking towards me with a look of

anger on his face and a quick pace. Bartlett was placing himself and his arms between me and juvenile yelling at me that I had no business contacting the juvenile and that he would not allow it. He put his hands very close to my face, pointing. I attempted to explain to Bartlett what I was doing and why. Bartlett was obviously upset and intoxicated (strong smell of ETOH, slurring, beer in his hand). I could barely get a word out before being interrupted. It was obvious to me that no matter what I said Bartlett was not going to agree and allow me to conduct my investigation. Bartlett came closer to me. I took this act as aggression and I felt threatened. I felt as if Bartlett was about to punch me. I pushed Bartlett back to create distance between him and me. Sgt. Nieves then went hands on with Bartlett, trying to gain control. I also went hands on, and conducted a leg sweep of his right leg. Bartlett continued to not comply, and resist by force. Sgt. Nieves threatened the use of a taser and Bartlett complied at that time. Bartlett was arrested for disorderly conduct and resisting arrest.

When/where:

Date/time occurred: Apr 13 2014 01:50

Home Address: 4040 Old Wood Road Ester AK 99709

Status/assignment information:

Status: Completed

Opened: Assigned: Due: 04/15/2014 Completed: 05/26/2014

Disposition: Within Policy

Unit assigned: Un-assigned
Handled at field/unit level: No
Investigator assign: Un-assigned
Supervisor assign: Un-assigned
Source of information:

Organizational component(s):

Division: State Troopers
Detachment: B
Post: Palmer

BlueTeam chain routings

Apr 15, 2014 21:34: Sent from Trooper Bryce L Weight [BLW1/308024] to Sergeant Luis A Nieves [LAN1/305069]

Instructions:

Blue team use of force incident for your review.

Reviewed by Sergeant Luis A Nieves [LAN1/305069] on Jan 16, 2015 at 16:10

Decision: Approved

Reviewer comment:

[Forwarded by Sergeant Luis Nieves]

CC(s) of this routing were sent to the following:

Apr 16, 2014 08:57: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

LT here is the blue team report as requested for the Arctic Man incident.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 10:07

Decision: Not approved
Missing Information

Reviewer comment:

Sgt. Nieves: Please ensure that all audios for this contact are attached. If there are no audios, for whatever reason, then please forward this back to me.

Apr 16, 2014 10:07: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Sergeant Luis A Nieves [LAN1/305069]

Instructions:

Please add the audio to this incident. If there is no audio, then forward back to me.

Reviewed by Sergeant Luis A Nieves [LAN1/305069] on Jan 16, 2015 at 11:26

Decision: Approved

Reviewer comment:

No audio.

Apr 16, 2014 11:26: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

No audio. Our new recorders (Olympus DM-620) do not have the remote controls to activate in a dynamic situation. We must manually pull them out of our vests/shirt pockets, take them off hold (side button), press record (front button on face of recorder; poor design that if not on hold will either start or stop recording due to all control functions being on the face of the recorder [stop, record, pause]), put the recorder back on hold, then return it to our pocket. The current remotes available for this recorder retail at $300.00 (DPS supply does not provide this accessory). No audio due to technical design failure.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 08:19

Decision: Approved

Reviewer comment:

[Forwarded by Lieutenant Lawrence Piscoya]

Apr 18, 2014 08:19: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Captain Burke W Barrick [BWB0/250337]

Instructions:

I asked Sgt. Nieves a few questions. He indicates the person is not known by the campsite renters,

where the party was occurring. He was heavily intoxicated and Sgt. Nieves indicates he was getting closer and closer to the troopers face from his point of view. The subject was aggressive and intoxicated. By the time, Sgt. Nieves arrived, Trp. Weight pushed the subject away and they took him to the ground. Trp. Weight indicates he felt threaten with Mr. Bartlett's aggressive manner as he approached. He stated in his report that at one time, he felt that Mr. Bartlett was going to hit him and felt threatened.

Reviewed by Captain Burke W Barrick [BWB0/250337] on Jan 16, 2015 at 15:12

Decision: Approved

Reviewer comment:

Exhibit B

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

AFFIDAVIT OF LIEUTENANT LAWRENCE PISCOYA

STATE OF ALASKA)
) ss.
JUDICIAL DISTRICT)

1. I work for the Alaska State Troopers and I am currently a lieutenant assigned to the D Detachment, which is headquartered in Fairbanks with additional posts in Barrow, Cantwell, Delta Junction, Galena, Healy, Nenana, Northway, and Tok. I make this affidavit at the request of the Alaska Attorney General's Office, which represents Sgt. Luis Nieves and Trooper Bryce Weight.

2. I have had had overall incident command responsibility for Alaska State Troopers work at the annual Arctic Man ski event since 2009. The Alaska State Troopers' mission for Arctic Man 2014, consistent with past years, was to provide public safety and law enforcement. The event encompasses an area of approximately three miles off the Richardson Highway at mile marker 197.5, which is north of Paxson.

3. Troopers from all over the state work at the Arctic Man event and stay in nearby lodging at the Black Rapids Cold Weather Testing Site at mile post 226.7 of the Richardson Highway. This housing facility is used with permission from the U.S. Army. AST uses a mobile command center (a mobile RV) owned by the Department of Military and Veteran's Affairs. AST sets up an on-site holding tent to process arrestees. Troopers working at Arctic Man communicate through a localized radio channel (Simplex) monitored by an on-site dispatcher rather than through the state-wide radio system. The state-wide radio system can only be accessed at the mobile command center.

4. Public safety and law enforcement at Arctic Man is unique for several other reasons as well. One major concern is the widespread extreme alcohol use at the event. This leads to high levels of intoxication and increased officer safety concerns. Because of this, I fully brief troopers in person before the event. We encourage troopers to pair up at all times if they can. We mandate that all troopers will be paired up upon entry into the beer tent. Arctic Man is held in a remote location with limited medical resources and limited backup. And because transport of prisoners is more difficult due to the remoteness of the location and it decreases

available staff, we don't encourage arrests. However, Troopers are told to use their judgment during each case and if they believe an arrest is necessary then they should complete it. If someone is unruly or highly intoxicated, troopers should be firm, professional, and fair. Troopers are encouraged to be proactive and to stop and address safety problems observed, e.g., speeding, reckless driving, people riding on the back of ATVs, and any other unsafe behavior.

4. Pre-set bail conditions for routine charges such as disorderly conduct are set by the court and disseminated to troopers in advance of Arctic Man. If a person makes bail, he or she is released on-site. Troopers are required to complete their reports before they leave the Arctic Man site.

5. We design the shifts to overlap during the busy times of each day of the Arctic Man event. Those busy times are between 1600 - 2000 hours and 2200 - 0200 hours. The first shift typically covers all potential search and rescues, injured riders, crashes, and afternoon events held by Arctic Man. Troopers get extremely busy at the end of the day shift. The later shift occurs after people have returned to their campsites and are ramping up the alcohol use. These campers have had four to five hours to eat, get cleaned up, and drink. During this time span, troopers are busiest dealing with intoxicated people. Arctic Man attracts the extreme side of alcohol consumption. In fact, there are so many intoxicated people at the event, the event organizer hires a bus called "the drunk bus" to transport people around the campgrounds. Active trooper patrols have likely saved many lives at the event. One year, for example, troopers found an

underage drinker passed out in a snow berm. Troopers know all too well the heightened risks to intoxicated campers – particularly vulnerable campers – of hypothermia and sexual assault.

6. To not only increase trooper presence, but give the appearance of high trooper presence, I instruct troopers to conduct many patrols and to be highly visible. As a result of this tactic, people have routinely told me they believe twenty troopers were present, when, in reality, AST has only six to eight troopers during peak overlapping shifts, at the event with upwards to 8,000 - 10,000 people. This high visibility deters a lot of problems. I also give high priority to providing back up. Although the vast majority of the campers that attend Arctic Man are good people, at times, some are so intoxicated they literally do not know what they are doing. Safety for the public is a trooper priority, but individual trooper safety is equally important.

7. It is not unusual for AST to get a media request to accompany a trooper on patrol at Arctic Man. Over the years National Geographic has done that. In 2014, KTVA contacted as the AST Public Information Office to request a ride-along. I assigned the KTVA reporter to accompany Sgt. Lu Nieves. Sgt. Nieves is an experienced and reasonable trooper who is knows policy and procedure and is familiar with the risks at Arctic Man. I typically limit media ride-alongs to no more than four hours a shift to lessen the burden on the trooper of the extra responsibility for a passenger.

8. I reviewed the use of force report that was submitted by Trooper Bryce Weight in connection with the arrest of Russell Bartlett. When I requested audio

from the troopers involved, I was referring to official trooper audio, if it existed. Sgt. Nieves informed me that neither he nor Trooper Weight had time to activate their audio because it was a dynamic situation and because of the design of the Olympus DM-620 recorders. This response was reviewed and approved and no policy violation was found.

9. I have since been provided more information about Bartlett's conduct, including depositions and the KTVA video and the enhanced video. In my opinion, Bartlett's arrest was reasonable under the totality of the circumstances, including Bartlett's interference with Trooper Weight's investigation, his apparent intoxication, and the increased risks to troopers at Arctic Man based on the factors discussed above.

10. I continue to have significant concerns about the Arctic Man event both in terms of public safety and trooper safety. When people ask me about the event, I routinely discourage them from attending because if they don't attend, that is one less at-risk person that troopers need to be concerned about.

/s/Lawrence Piscoya
Lawrence Piscoya

SUBSCRIBED AND SWORN TO before me this 1 day of December, 2015.

[SEAL] /s/Ashley Sargent
Notary Public in and for Alaska
My Commission Expires: w/office

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT FAIRBANKS

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
vs.	)
	)
LUIS A. NIEVES, in his personal capacity and BRICE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF BRYCE L. WEIGHT
July 31, 2015

APPEARANCES:

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* * * *

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* * *

[p.29]

Q Why don't you draw an arrow to reflect your direction of travel?

A Okay. And again, this is just my memory. We were moving away from the -- the people and the -- the noise.

Q And how far away from the people and the noise did you get?

A I couldn't give you an exact answer.

Q So, why don't you go ahead and put another circle at the point you believe you stopped with Mr. Walker to chat with him.

A Okay.

Q Okay. Why don't you put a -- let's put a 1 in the first circle and 2 in t he second one. So, the 1 would be where you first saw him, right?

A Sure.

Q And 2 is where you stopped to chat with Mr. Walker, correct?

A Correct. We moved away from the people and the music.

Q Okay. So, at the point you stopped with Mr. Walker you started engaging him in conversation, is that correct?

A Correct.

Q What was your perception at that time in terms of the distance you needed to stand from Mr. Walker for you and him to converse?

A I don't recall the exact distance we were.

* * *

[p.33]

Q (By Mr. Wilson) And that's one of the reasons why you try to put as much specifics as you can in your police report, right?

A That's why I write the police reports.

Q Yeah. 'Cause you don't want to be two months down the road trying to remember what you said and you don't have it in your report?

A Those things help me remember, correct.

Q Okay. So, you're having this conversation with Mr. Walker what happens? Whe – when is the first time you notice Mr. Bartlett?

A The very first time I ever noticed Mr. Bartlett was when I was talking with the – the teenager this individual who was Mr. Bartlett starts approaching me. I see him coming from a – a little bit off, he has this look on his face like he is pissed and he is walking straight at me.

Q And how far is Mr. Bartlett away from you, as best as you can recall, when you first observe him?

A Again, can't give you the exact distance. Are you asking for an estimation?

Q Yep, give me your best estimate.

A Okay. Just something like 20, 25 feet.

Q And is Mr. Bartlett with anybody as he's approaching you?

A I don't recall if he was with anybody.

[p.34]

Q And what is it about Mr. Bartlett that you say indicates to you that he was pissed?

A He had a look on his face like he was on a mission. He was zeroed in on me, a look of anger on his face

and there was no question where he was going, he was coming right for me.

Q And so then Mr. Bartlett arrives at your location, correct?

A He comes and stands next to me and the teenager.

Q Okay. And how long is it between the time that Mr. Bartlett arrives standing there at -- with you and the teenager and the time that you shove Mr. Bartlett?

A Again, I can't give you the exact perfect amount. From my memory it was less than a -- probably a minute.

Q And Mr. Weight, just to save you this I -- I'll -- you don't -- I understand you're giving me your estimate, your best recollection. Okay. I -- so, I'll stipulate that that's what you're doing, okay?

A Sure.

Q If you're doing something other than that you let me know because otherwise that's what I assume you're up to. All right?

A If I can give you an exact answer I'll let you know.

Q Okay.

MS. GALBRAITH MOORE: Otherwise -- well -- but

[p.35]

answer the questions that -- that you -- in a way that you feel is appropriate.

A Yep.

Q Sure. So, less than one minute. Can you give me a -- it was at least a certain amount of time?

A It would -- definitely it was not immediate. I'd say at least 30 to 45 seconds.

Q Okay. And then what is the first part of the conversation that Mr. Bartlett participates in from your standpoint?

A When Mr. Bartlett approached he was visibly angry, you could tell the way he was talking to me he was angry. The harshness in his voice and again, I can't tell you the exact words that he was saying but it was you have no right to be here, get out of here, you can not talk to this -- this kid. I tried to explain to him who I was, what I was doing, and it was almost impossible for me to get a word out. He was talking over me, interrupting me, not letting me say anything verbally really. He was very adamant and it was obvious to me it didn't matter what I had to say. I could -- there's not anything I could possibly say or have said in that situation to get him to leave or exit the situation. There was nothing verbally I could have done, it was obvious to me.

Q Okay. So, and I understand you -- you're not giving us

[p.36]

quotes but you conveyed the concept that Mr. Bartlett says you have no right to be here, he wants you to get out of here, you can not talk to this kid.

You then tried to explain your position on those issues with Mr. Bartlett and then what's the next -- what else happens in this conversation?

A He gets more ramped up as it goes on because I am not doing as he's basically commanding me to do. I'm not doing what he's telling me to do and he escalates his voice, his hand gestures, his overall demeanor becomes more hostile because I'm not complying.

Q So, from the time he arrives until the time you shove him is it a continuing escalating behavior on behalf of Mr. Bartlett, that what you're describing to me?

A Yes.

Q Okay. And so then I want to make sure I have any other conversations you had with Mr. Bartlett before you shoved Mr. Bartlett that you can recall?

A I tried to talk to him, I tried to explain what I was doing, it was not working. I was beginning to feel threatened and felt threatened for my own safety and the safety of other people in the area.

Q And what was it that Mr. Bartlett did that made you feel threatened?

A Well, he decreased the distance between myself and him,

[p.37]

he absolutely put himself between me and the teenager that I had been talking to. The look on .....

Q Well, let .....

A ..... look on his .....

Q ..... let me -- let me interrupt you there. I don't mean to (indiscernible - fast speaking). What about him putting himself between you and the teenager made you feel threatened? Why does that make you feel threatened?

A Because -- and I want to get this right but -- by him putting himself between me and that person that could be considered he doesn't want to miss and accidently hit that person or if he's going to become assaultive he wants to kind of move that person out of the way, I guess you could say type of a deal.

Q Was that person ever in the way?

A Me and the teenager were talking and then he got in between us.

Q But was the teenager ever between you and Mr. Bartlett?

A Well, I think -- well, Mr. Bartlett wasn't there when I was talking to the teenager initially. So, I would say as soon as Mr. Bartlett approached he interjected himself between us.

Q Okay. Fair enough.

A Yeah.

Q My question is, was there ever any point in time where

* * *

[p.40]

either, let's put T for teenager.

A Okay. So, ...

Q And where is Mr. Bartlett when he first arrives?

A I remember him coming from the -- my left side. So, Bartlett would have interjected something like that.

Q So, put the B where you recall him standing. Now, you got movement there, I want to make sure I know where he came to rest as he first started to speak with you.

A Okay. So, he would have been something like this and then I would have turned towards him.

Q Okay. And so then, I mean, even as you have it right there it seems to me like the teenager is not in any way an impediment to Mr. Bartlett assaulting you, correct?

A The teenager moved. It's not a -- a static .....

Q Right.

A ..... situation.

Q But I'm just asking right here. Okay. Wh -- is that -- is that a correct statement?

MS. GALBRAITH MOORE: Objection, form of the question.

Q (By Mr. Wilson) Upon initial contact with Mr. Bartlett, his initial sh -- coming to speak with you the teenager was not in any way an impediment to Mr. Bart -- Bartlett assaulting you, correct?

A Mr. Bartlett interjected himself in between me -- myself

[p.41]

and the teenager. The teenager moved off to the side and Mr. Bartlett began yelling at me basically.

Q I .....

A I can't draw a video, I can't draw a moving thing, I can draw a static.

Q Sure. I get that .....

A Yeah.

Q ..... but I'm asking you a very specific question.

A Can you rephrase it then?

Q Sure. As you just described it and I know we're frozen in time here, okay. This is the point Mr. Bartlett arrives. Mr. Bartlett starts to speak with you and as I understand it that's what you've depicted as far as locations here, is that correct?

A Mr. Bartlett comes and intervenes, ...

Q Yes.

Q ..... gets in my face, yes.

A Okay. And what I'm saying is as of this moment the teenager is no way an impediment to Mr. Bartlett assaulting you, correct? He's not in between you, he wouldn't -- Mr. Bartlett wouldn't have to worry about hitting him if he took a punch at you, ...

MS. GALBRAITH MOORE: Objection, form, ...

Q ..... or any of those kind of factors?

MS. GALBRAITH MOORE: ..... foundation.

* * *

[p.43]

Again, you asked me to draw this from my recollection. You know, this is what I recall. I'm talking to the -- the teenager, Mr. Bartlett comes on a string like a man on a mission straight at me and interjects himself in between me and the teenager.

Q Okay. Now, explain to me how it is as -- based on this depiction as you've said. This is the moment in time where you -- Mr. Bartlett just arrived, how it would be that the teenager would be some sort of a -- at threat, you know, being in the middle of it if Mr. Bartlett had took a punch at you?

A If Bartlett reached back he could possibly hit him with his elbow.

Q So, if he did something backwards he might do it but if he lunges at you the teenager would have been behind Mr. Bartlett, right?

A Well, the dynamics of a punch people don't just go straight oftentimes they do move their arms back prior to throwing those punches.

Q Okay. And as you recall it is there ever a point in time where these loc -- relative locations here change in the course of this conversation before you shoved Mr. Bartlett?

A Again, I -- I don't recall the exact, every single movement that was made once Mr. Bartlett was on scene.

* * *

[p.52]

Q ..... that's why it's not in your report?

A ..... I would disagree with that.

Q But it certainly didn't come to mind to you whenever I asked you to tell me everything you said to Mr. Bartlett and you didn't even -- even as you sit here today didn't think to say that to me, did you, until I specifically raised it with you?

A And again, I'll do my best to answer every question you have. I will tell you what I recall from the conversation. Your question might jog a memory, if you would.

Q Let me ask you about the first sentence here of the next paragraph. Could you read that to me would you?

A Are you talking about paragraph three at the bottom?

Q Yes, sir.

A Russell stepped forward to where his chest was almost touching mine, and his face -- his face was very close to mine. I took this action by Russell to be combative in nature. I'm sorry, that was two sentences.

Q And then go on one more actually, you're doing well, one more sentence.

A I placed both hands on Russell's chest and pushed him away from me.

Q The way I read this paragraph is that this is the final precipitating action by Mr. Bartlett that led you to

* * *

[p.54]

that happened before, okay, but we're down to the last thing that makes you do what you do is that Mr. Bartlett gets to where his chest is almost touching yours, his face is very close to you, you took that to be combative in nature and therefore you pushed him away?

MS. GALBRAITH MOORE: Your question?

Q Am I reading that -- am I understanding .....

MS. GALBRAITH MOORE: Objection, ...

Q ..... that correctly?

MS. GALBRAITH MOORE: ..... asked and answered.

A Yeah. You're -- you're reading it correctly but he also had his hands in my face.

Q (By Mr. Wilson) You say -- okay. So, you're missing that part. All right. But you certainly -- is it your recollection that the hands, him almost touching you, his face was very close to you, you took those as

combative and that was the final straw, you decided to shove him?

A It was everything up to that point. He was very angry and he was very hostile, I thought I was about to get assaulted.

Q And then you say I sh – pushed him away from me. Then you say, quotes: Russell came at me again.

A That was my recollection at the time I wrote the report.

Q And do you believe that's an accurate recollection?

A Having viewed the video I don't think it's 100 percent

* * *

[p.68]

of the Sadler party other than what we've already discussed in this case?

A Any other contact beside – I can tell .....

Q Relative to this matter in any way, okay?

A Okay. Well, what I think you're getting at which of course I'll answer because I think that's what you're talking out but did I go back and talk to the teenager afterwards?

Q Yes, sir.

A Okay. And the answer to that is yes, I did. I was concerned that the kid had been drinking and this – who – individual who I'd never seen before, never contacted before that I didn't approach or initiate

anything with was trying to run interference for this -- for this kid. So, I did go back and talk to the kid.

Q And what did you -- what -- tell us what happened?

A And again, and I can't tell you the exact words that were used but the kid kind of seemed surprised about what just happened. I asked him if he knew that individual that just got arrested and he told me no. And he seemed like he had no clue. I was like, you've never seen that guy and again, I can't tell you exactly what I said but it was do you know him at all, those are the -- the basics. And he's like no. And the guy that was with him also was like no, we don't know who that guy is. The guys -- the

[p.69]

kid and the other guy that was with him at that point, very cooperative, very compliant. The teenager blew into a -- a PBT, a preliminary breath test, it was triple zeros. I thanked him for his cooperation, he wasn't in any kind of trouble at all and he went on his way.

Q Didn't the -- did the thought occur to you at some point that you should take down the name of the person who stood right there and witnessed all these events?

A I was trying to get back so I could deal Bartlett at that point.

Q But that -- that's not my question. Did the thought occur to you at that point in time .....

A At that point in time, no.

Q Does the thought occur to you at this point in time that that would have been an appropriate thing for you to do?

A Yes.

Q And this other person who is there can you – do you remember anything about this other person?

A Again, a male. It was a White guy, nice, cooperative.

Q About how old?

A Probably a little younger than I am, I'm 32.

Q Any facial hair?

A I – I don't recall.

Q Do you remember anything about hair coloration, eye color or anything else you can tell me about this other person?

* * *

[p.87]

Q (By Mr. Wilson) Sure.

A ..... asking there?

Q So, you didn't ask Mr. Bartlett?

A No , I did not – I did not believe he would provide any kind of a breath sample given his demeanor and uncooperativeness.

Q And had you simply asked him then we would know what Mr. Bartlett would have ever said in response to that question, correct?

A I can imagine what he would have said but yes, we would have known.

Q We would have known. And instead what we're left with is your inferences about what you believe Mr. Bartlett would have said had you asked him the question you never asked him, correct?

A As far as the question goes, yes. Based on my training and experience and everything he was exhibiting, the totality of his circumstances and everything I think as long as you like to use that word reasonable, a reasonable officer could infer he was impaired.

Q And one of this thing in this use of force report that gets kind of raised as an issue is where is the audios, right?

A I haven't seen this.

Q Go on to 0435, right at the very bottom.

* * *

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT FAIRBANKS

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
vs.	)
	)
LUIS A. NIEVES, in his personal capacity and BRICE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF LUIS A. NIEVES
July 31, 2015

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* * *

[p.31]

receiver and then a -- a microphone similar to what I'm wearing right now and it's a wireless.

Q So, before you got out of the car is it fair to say that you knew you were going there to investigate minor consuming?

A Yes.

Q If you know you're going to a scene to investigate why don't you activate your audio recorder at that point?

A At that point I had multiple officers, music, it was a -- a -- I had just spoken to one of the Troopers there and -- which was Trooper Weight who advised me of the situation. I didn't activate my recorder. I have a -- don't have a reason why I didn't activate my recorder I just went in to go and speak with the -- my goal was to speak with who -- who was ever in charge of the camp site and tell them that people were -- that kids were talking their alcohol and they needed to store their alcohol.

Q Sure. You would -- would you agree with me that you could have easily activated your recorder before you got out of your police vehicle?

A It -- it depends. The -- the -- this type of a recording system that I have if -- if I allow myself enough time for officer safety I can activate this -- this recorder but in this situation where it was -- it was still developing I -- I just didn't think of activating it at

* * *

[p.62]

A To the RV?

Q Yeah.

A When I'm inside the RV?

Q Well, did you get inside the RV?

A Yeah.

Q And what point is Mr. -- what is the situation, where exactly are you .....

A Oh, well, ...

Q ..... when you –

A Well, depending on what you're going – I'd like to see the footage that you have because the footage that I've reviewed it's completely chopped. I'm – it's completely edited. I'm at the doorway, you hearing me speaking momentarily and that's just a small fraction of the conversation that happened. So, it's not even the entire conversation where your client's yelling and screaming that they don't need to al – speak with me, that Mr. Sadler doesn't need to allow me to enter the RV at which point Mr. Ad – Sadler allows me to enter the RV. I closed the door behind me 'cause I couldn't hear – I couldn't focus on what Mr. Sadler was saying to me and what your client was doing disrupting the – the entire invest – situation there.

Q It – Trooper Nieves, I think we've seen – all seen the same video. Okay. There is just a short clip there but

* * *

[p.65]

Q Okay. And then do – did you have to do something to get Mr. Bartlett's attention or you just walked up to him and started speaking?

A I believe I tapped him on his shoulder, he turned around.

Q Okay.

A And .....

Q And what did you say?

A I said, hey, Mr. Bartlett I just – well, I didn't know what his name was then – I said hey, sir, I – I just wanted to explain to you why we're here right now. As you saw we're trying to secure the alcohol and he starts yelling at me saying that I don't want to talk to you, I don't have anything to say with – say to you, you need to get out of here if you're done. So, at that point I had to make a decision. You know, it's this guy is highly intoxicated, he's not being reasonable, do I stay here and then run the risk of now he ends up crossing that line and becoming disorderly or can I just leave and defuse the whole situation. I chose to leave.

Q And what was it that you believed that indicated to you that Mr. Bartlett was highly intoxicated?

A Slurred speech and white watery bloodshot eyes, thicks – the – his level of aggression which made zero sense to me, and his failure to understand the circumstances, the fact that there's juveniles consuming alcohol and the

* * *

[p.70]

A There was a female that answered the door and then she – I asked who was in charge and then she had a – a – Mr. Sadler come up and then that's when I started speaking with Mr. Sadler and I couldn't hear much of what he was saying because your client was yelling. And then I explained to him why I was there and then once he understood why I was there he told me to come in, close the door. We spoke about the fact that we had juveniles taking the alcohol and he agreed to immediately bring the

alcohol in and then he even agreed to shut down the party. He asked me -- he asked me do you want me to shut down the party and I said no, not at this time we just need to secure the alcohol right now.

Q I read down through your report and now moving on to the second paragraph and I want to draw your attention to this thing which is -- it says: Partlor -- Bartlett begin to close Trooper Weight resulting in Trooper Weight pushing him away. Do you read that?

A Yes.

Q The way I read that is that you're stating here that the reason that Trooper Weight pushed Mr. Bartlett is that immediately proceeding Trooper Weight pushing Mr. Bartlett, Mr. Bartlett was closing on Trooper Weight?

A Yes.

Q And you believe that an accurate statement as to what

* * *

[p.72]

Mr. Bartlett is closing on the Trooper as opposed to the opposite?

A No. No. No. He -- he had closed the distance from -- he -- Mr. Bartlett was all the way on the other end of the campsite when I first contacted him. I walk around the corner, I thought Mr. Bartlett at that point remained to enjoy the music. Your client then came all the way across as I'm watching to see what

my -- my Trooper is doing. Your -- your client came all the way across and brought the fight to my Trooper and started getting involved in an investigation where we believe a minor may have been consuming alcohol. Your client then starts getting closer, closer, closer, tensing up and then gets in my Trooper's face at which point my Trooper has to clear Mr. Bartlett away from him.

Q Okay.

A And those are my observations.

Q Sure. And what I asked you before when we read this language here was that it was Mr. Bartlett, not the fact that Mr. Bartlett walked across from the party, okay, what precipitated Trooper Weight shoving him, it was that according to you Bartlett begin to close Trooper Weight resulting in Trooper Weight pushing him. And I asked you are you saying that right before Trooper Weight shoved him Mr. Bartlett took some steps to close toward -- on

* * *

[p.77]

Q Okay. So, ...

A Okay.

Q ..... before .....

A This part to that and you'll see -- well, that's why I positioned myself around his back 'cause I don't want to get hit in the face.

Q By what?

A By his fist.

Q So, we've already seen the part where he swung his right fist at you?

A Yes, sir. He -- from what I can see he's getting ready to swing and then that's why I stepped around the back of him and that's why I'm -- I get behind him.

Q Okay. And then is this where he's fighting with you?

A Yes, sir. He's tensing up the whole time, that's stuff that you may or may not be able to see on video but he's tensing up, he's pulling away from us and we're holding on for everything we've got on him.

Q Do you give people a second to kind of digest what's occurring whenever you grab a hold of somebody like that?

MS. GALBRAITH MOORE: Objection, foundation.

A He knew he was being contacted by Troopers. At that point there's no -- he was being placed under arrest. He -- he was already creating a hazardous situation, he's going to jail.

[p.78]

Q (By Mr. Wilson) So, at -- I mean, at the very moment that you guy -- that Trooper Weight decides to push Mr. Bartlett, Mr. Bartlett is standing there, correct?

A No, he's trying to clear Mr. Bartlett from attacking him which is what my perception was as well. I we both felt that -- I felt that Trooper Weight was in

danger and Trooper Weight clearing him that's clear to me that Trooper Weight also felt that he was in danger at that point. Your client was being unreasonable and was creating a hazardous situation and it was only a matter of time before he struck my Trooper so we stopped it.

Q You're not a mind reader, are you?

MS. GALBRAITH MOORE: Objection, form of the question .....

A Unh-unh (negative).

MS. GALBRAITH MOORE: ..... and foundation.

Q (By Mr. Wilson) I just wanted to make sure that we're all on the same page.

A Well, that's kind of an insulting question but .....

Q Are -- do you claim to have some ability to read people's minds?

MS. GALBRAITH MOORE: Same objection.

A It's a -- that's an offensive .....

MS. GALBRAITH MOORE: It's an .....

A ..... question.

* * *

[p.82]

Q But -- and .....

A I answered your question, it's scenario based. It -- I can't .....

Q No, my .....

A ..... I can't give you a blanket answer on that.

Q This is the scenario. Okay.

A What's a .....

Q I'm asking you about this scenario. I understand that, ...

A Yes.

Q ..... you understand that.

A My Trooper was not safe with your client one on one in that scenario.

Q Okay.

A And that is why I responded.

Q I understand that's your opinion.

A No, that's a fact .....

Q My .....

A ..... and your client's actions .....

Q ..... but my -- I'm actually asking .....

A ..... confirmed it.

MS. GALBRAITH MOORE: Wait. Wait .....

Q ..... a little different question.

MS. GALBRAITH MOORE: ..... for a question.

Q ..... than that.

* * *

[p.88]

A No, even -- well, yeah, when the video starts you can see where he's getting louder and getting closer to my Trooper and that's my perception and that's why I had to act.

Q Mr. Bartlett isn't even talking at all .....

MS. GALBRAITH MOORE: Objection, form.

Q ..... when the video picks up, correct?

MS. GALBRAITH MOORE: Objection, form of the question, foundation.

A It sounds to me like he's yelling from what I saw.

Q (By Mr. Wilson) Was there ever any point where Mr. Beard contacted you and asked about whether or not there was a video in this case or was your first contact Mr. Beard contacted you and he already knew there was a video?

MS. GALBRAITH MOORE: Objection, foundation.

A I don't remember. I just remember him saying can you get -- can you -- can you subpoena the cameraman and tell him to bring any footage that he has with him. And then where I learned about sub -- doing the subpoena for the executive producer as well was through our public information office because I had to figure out who the cameraman was and how to get a hold of him and they recommended that I subpoena both.

Q (By Mr. Wilson) And are you aware of any video, other than the video we've just played here?

* * *

[p.93]

crime?

MS. GALBRAITH MOORE: Objection, foundation.

A No, sir. That -- that -- that was that -- he -- I -- I believe your client clearly understood what I was referring to, the fact that when my -- when my -- when my Trooper initially told him hey, I'm in an investigation, you need to walk away and your client chose not to and -- and instead bring the fight to him he should have walked away and then he wouldn't be in jail and we wouldn't be here right now.

Q (By Mr. Wilson) Okay. Do you claim that you heard -- well, let me back up and just ask the question this way. I want you to tell me every word that you heard, you claimed to have heard between Mr. Bartlett and Trooper Weight in reference to the -- from the point they came together until the point that Mr. Bartlett leaves the scene in handcuffs.

A My recollection is -- Trooper Weight is -- he -- Bartlett is yelling at him you can't talk to him, you can't talk to Mr. McCoy -- you can't talk to him. And Trooper Weight says sir, I'm a -- I'm speaking to him, you've got to go away, you got to walk away. Walk away. He says you can't talk to him, you can't talk to him and he starts getting closer, getting more aggressive. And then at one point it looks like he's getting ready to hit my

[p.94]

Trooper and my Trooper clears him.

Q Did you hear any other conversation between Trooper Weight and Mr. Bartlett?

A No, other than Trooper Weight telling him to disburse, to leave and your your client's refusing to do so.

Q Tell me as is bat -- as best as you can recall exactly how it is that Trooper Weight told Mr. Bartlett to disburse and leave.

A You need to leave. You need to leave.

Q Anything else other than what we've already talked about?

A No, I -- I -- it was clear to -- we made many attempts to explain to Mr. Bartlett why we were there, that there was juveniles consuming alcohol and that's a significant issue as you can imagine in Alaska and especially at Arctic Man and that's why we were there and he chose to not accept that reasoning.

Q Would you agree with me that Trooper T – Mr. Bartlett is certainly entitled to just stand there and listen to you guys say these things to him, right?

MS. GALBRAITH MOORE: Objection, foundation.

Q (By Mr. Wilson) Is he entitled to do that?

MS. GALBRAITH MOORE: Stand where?

A Stand where?

Q Stand where he was, stand right there .....

A No.

* * *

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

DEPOSITION OF DAVID KRACK
July 27, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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* * * *

* * *

[p.21]

A I don't remember where he was at that time.

Q So you don't know if he was with you at the time?

A He was at the party, but I don't think he was right next to us.

Q You don't think he was next to you when you saw sergeant -- or the person go to the RV?

A Unh-huh.

Q Right? And why do you think that? Why do you say that?

A What.....

Q Just your memory that he wasn't there?

A That's -- yeah. I don't remember him being right next to us at that time.

Q So did you watch the trooper at the RV? What did you see?

A After that, I -- Russell went over there and asked the trooper, you know, what was going on. They talked. I was too far away. And the trooper left and Russell came back.

Q The -- so the -- Russell went over on his own to.....

A Uh-huh.

Q .....the trooper? You're nodding your head. You need to.....

A Yes.

Q Yes.

[p.22]

A Yes.

Q How close did he get to the trooper?

A Five feet.

Q How close were they -- was he to the door of the RV?

A 10 feet, maybe. They were right in front of it.

Q And did the trooper tor -- did he it look the trooper and Mr. Bartlett were talking to each other?

A Yes.

Q And do you have any idea what they were -- could you hear anything?

A No.

Q You couldn't hear.....

A I was too far away.

Q .....anything?

A No.

Q Did Mr. Bartlett tell you, at any point in time, what he said to the trooper?

A No.

Q Did he tell you later, at some other day, what he told you -- what he said to the trooper?

A I really don't remember what he said, if he said anything at all.

Q Do you recall -- but I talked to you on the phone a couple weeks ago, and you told me what he said. Do you remember what you told me?

* * *

[p.29]

A .....ish.

Q .....a lot of people dancing in between or just a.....

A There was a few, but the main group was not in -- in our sight line.

Q When you saw the trooper and McCoy, were there any other troopers that you could see near the two of them?

A His car was parked over to -- on his right-hand side, but I didn't notice if anybody was there or not.

Q Okay. So you headed toward them. And who -- were you walking side by side or.....

A Rusty was ahead of me by 15 feet or so.

Q By 15 feet? Did you start at the same time?

A He was ahead of me when -- when we saw them.

Q Oh, okay. So he -- did he -- where did he go? Where exactly did Rusty go?

A To the trooper.

Q To the trooper. And where exactly did you go?

A To the trooper.

Q How close did you get to the trooper?

A 10 feet.

Q And on what side of the trooper did you stop?

A His left-hand side.

Q So did you -- you passed the trooper?

A He was standing facing the party, and we walked towards him and I was on his left.

* * *

[p.33]

Q And where di -- how far away did the trooper push.....

A Well, he landed on his knees probably four or five feet in front of him.

Q What's your level of confidence that Mr. Bartlett landed on his knees after he was pushed?

A He landed on one knee. I can -- like 99 percent sure.

Q What knee? Right knee or left knee?

A Right knee.

Q And can you describe how the trooper pushed him?

A Two hands to the chest.

Q Two hands to the chest? Did Mr. Bartlett's beer spill?

A That, I don't remember. I don't know.

Q Do you know if he had a beer?

A I don't.

Q Did you have a beer in your hand?

A I don't remember if I did at that time or not.

Q Do you know what -- whether Mr. Bartlett raised his -- one or both of his hands up toward the trooper's -- in the direction of the trooper's face?

A He was speaking with his hands, you know, like.....

Q Both hands? You just demonstrated both hands.

A Yeah, but that's just how I demonstrated. I really don't know 100 percent.

Q Which hand was he speaking with?

A I don't know. Both, I think. Maybe his right.

[p.34]

Q Maybe his right? And so where -- how close did the -- his hand get to the trooper's face?

A A foot or so, maybe.

Q Maybe.....

A They were close, because you had to be close to talk to people. It was like really loud.

Q Sure. But could it have been closer than a foot, his ri -- his hand closer than a foot to the trooper's face?

A I don't think he was that close.

Q Okay. And then what happened when the trooper went to -- or what happened after Bart -- Mr. Bartlett was pushed away?

A He tried to stand up and two officers put him to the ground and handcuffed him.

Q Okay. So the -- and the trooper that was speaking with McCoy, that's the same trooper that came back and.....

A That I spoke to, yes.

Q Right, right. And that you described as calm?

A At that time, he was.

Q Yeah. And that -- I asked you this question, I think, when we spoke on the phone, so I'm going to ask you again. And I -- do you think that looking back on when Mr. Bartlett approached the trooper who was speaking with McCoy, that it's reasonable that a police officer

[p.35]

could have felt threatened by Mr. Bartlett based on his approach toward him?

A In different circumstances, yes.

Q And when I inter -- when I asked you that question on the phone interview, you said, yes and no. Do you recall saying that?

A Yeah. In different circum -- that's the no part, was different circumstances.

Q So -- but it -- but -- and if you want to go ahead and explain what you mean.

A The noise level was so high that you had to be that close to talk to people. You had to get right next to somebody to hear what they were saying or to talk to them.

Q So that would be the -- why you would say -- that's the no part of it? No.....

A Yeah.

Q .....it's not reasonable. But the yes part of it, can you explain that, why an officer could feel threatened?

A If it wasn't as loud, I would -- you know, there would be no reason for someone to be that close.

Q Before the trooper actually, you know, put his hands on Mr. Bartlett and shoved him away, did you see another trooper approaching?

A I don't recall. I didn't pay attention to it.

* * *

[p.41]

Q Okay. When is the next time you talked with Mr. Bartlett?

A I saw him the next morning, probably around 11:00 o'clock or so.

Q Around 11:00 o'clock. Where did you see him?

A At our campground.

Q Like at the campground. Where at the campground?

A I think he was outside of the RV that he was staying in.

Q Did you have a discussion with him?

A I just asked him, you know, what -- what went on? What happened? And he said they were -- because like he spent the night at their drunk tank or whatever, and they let him come and talk to Natalie to find bail money.

Q So -- and is Natalie one of the camp -- one of -- at your camp?

A Yeah.

Q And what's her last name?

A Chamberlain.

Q And he -- does she put up the bail money?

A Yes.

Q Okay. How old is Natalie?

A I really -- late -- mid 40s, maybe. Early 40s, mid 40s.

* * *

[p.59]

Q Mr. Krack, would you have been comfortable getting in a vehicle with Mr. Bartlett and having him drive you, given the amount of alcohol he'd been drinking?

A No.

Q Okay. Would you be comfortable driving a vehicle yourself.....

A No.

Q .....and have -- and why is that?

A I was over the legal limit.

Q Okay. And you think Mr. Bartlett was over the legal limit as well?

A Yes.

Q And did he have alco -- could you smell alcohol on his breath?

A Maybe. I don't know. I didn't -- I don't pay attention to that. I don't remember.

Q Do you have any law enforcement training?

A No.

Q Do you have any training on safe distances for law enforcement officers?

A No.

Q Reaction spaces.....

A Nope.

Q .....for law enforcement officers?

A None.

* * *

[p.61]

A Yes.

Q And you're testifying under oath that you could see his hands as he approached -- you could see his right hand as he approached Trooper Weight?

A Yeah.

Q At all times, could you see Mr. Bartlett's right hand as he approached Trooper Weight?

A I was on his right side, yeah.

Q You were on whose right side?

A Rusty's.

Q How many feet away were you?

A 10.....

Q Why did you tell me you couldn't.....

A .....15.

Q .....see his hand when you talked to me on the phone a couple weeks ago?

A I don't remember telling you that.

MR. WILSON: Object to the form of the question.....

Q I had a witness present.

MR. WILSON: .....argumentative.

Q I had a witness present.

A I really don't know.

MS. MOORE: I -- I'll go ahead and mark this exhibit 3, so we go in order. And have that submitted with

* * *

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

DEPOSITION OF RUSSELL BARTLETT
July 27, 2015

APPEARANCES:

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* * * *

* * *

[p.20]

A I want to say it's, I think, 2006ish, somewhere in there.

Q What's your height and -- current height and weight?

A I'm five foot nine inches tall, and I weigh 224 pounds this morning.

Q And what was your height and weight in April of 2014?

A Five foot nine.

Q And weight?

A And I was probably -- 2014, with a guesstimate, 245 pounds, 240 pounds.

Q 240 to 245?

A Somewhere right in there.

Q What's the weight on your driver's license say right now?

A Give me a moment, I will tell you. Excuse me, while I take this out.

Q No worries. Yeah, take it out.

A It says 235 pounds.

Q Do you know when you got that driver's license?

A I believe it was -- well, they're good for five years, I believe.

Q So when is it due?

A '17.

Q What's the maximum weight you've reached in your life?

A 270 pounds.

* * *

[p.27]

A I believe it was around 12:30 from the police report. That's the only way I recall it, what time it was.

Q And about what time were you released?

A Gosh, I -- let's see. I want to say 2:00 -- 2:30 or 3:00 in the morning.

Q How long did it take you to get from Jerry Sadler's campsite to the jail tent area?

A I want to say approximately five minutes.

Q Were you -- was David Krack near you at the time you first saw Sergeant Nieves?

A Yes, he was.

Q What do you -- how would you describe David Krack's level of intoxication at the time you first saw Sergeant Nieves?

A I have no way of determining that. He was speaking fine. He wasn't stumbling, to my knowledge.

Q Do you think his alcohol level was above or below the legal limit to drive a vehicle?

MR. WILSON: Object; calls for speculation.

Q You can go ahead and answer.

A Oh, all right. I – I – I – I believe it was.

Q It was what?

A Above the legal limit to drive.

Q And – so let's just – what – clarify what I meant by that question, what you meant by that answer. So do

* * *

[p.30]

was working the jail that night. And I believe he works over here at the courthouse.

Q Over – when you say over here.....

A At the courthouse.

Q The Fairbanks courthouse?

A Fairbanks courthouse.

Q Have you seen that person over there?

A I have not.

Q Then what makes you think he works at the Fairbanks courthouse?

A He had told me so.

Q When did he tell you that?

A During -- during my -- during my incarceration at the jail at the Arctic Man.

Q What else did you talk about with him?

A I asked him if he could release my -- or loosen my cuffs on my hands, because they were very tight.

Q And did he do that?

A He did. He brought them around from the back of -- behind my back where I was cuffed, and I brought them around to the front. And at that time, I -- I had told him and -- to take notice of how -- the color of my hands. They were purple, because the cuffs were so tight on my wrists and cutting into my wrists, that it cut off the circulation to my hands.

[p.31]

Q Had you told anyone before that, that your cuffs were tight?

A I did not. My hands started hurting -- hurting behind my back.

Q When did they first start hurting?

A I can't tell you exactly when.

Q Was that while you were in the tent?

A It was while -- while I was in the -- in the jail there at the tent. I started noticing my hands going numb and hurting.

Q And the -- and when you first told the trooper that was watching the tent, that they were -- how long did it take him to move them to the front?

A He did it immediately.

Q All right. Did you ask for any medical help at that time?

A I did not.

Q Did you ask for any medical help at any time when you were at the tent?

A I did not.

Q Did you believe you needed any medical help at the time?

A No, I did not. I didn't believe I needed any medical help.

Q So Arctic Man 2014, was that -- how long was the total

* * *

[p.68]

Q Let me ask you this. Was there a -- was there any alcohol outside the motorhome near the doorway?

A I don't recall. I don't recall.

Q Did anyone come.....

A I.....

Q .....outside of the -- out of the motorhome?

A No. I don't recall anybody coming out, no, from when I was looking over there in that direction.

Q It's possible someone came out; you just don't recall. Is that what you're saying?

A Yeah, it's possible someone came out. I – I just don't recall.

Q Did you yell anything at Sergeant Nieves while he was at the door to the motorhome?

A No.

Q Did you yell anything at Sergeant Nieves at any time before he approached you?

A No.

Q Did you yell anything at the people in the motorhome while Sergeant Nieves was approaching the motorhome or near the motorhome?

A No.

Q Did you yell anything at any time that was something like, you don't have to allow troopers to search the motorhome?

[p.69]

A No, I don't recall saying anything like that.

Q Did you say anything at any time that you don't have to let him in?

A No.

Q So you've talked already about your conversation with Trooper Nieves. Is there anything else that you

said to Trooper Nieves or he said to you near the motorhome that you -- we haven't discussed?

A I think, no. I think he -- I told you everything that he said that I recall.

Q And when he tapped you on the shoulder, where was the camera guy?

A I don't recall. I don't recall seeing him after that.

Q And where did Trooper Nieves go?

A After he tapped me on the shoulder and we exchanged -- or.....

Q Right.

A He walked off towards the back of the motorhome, in that direction.

Q All right. I pulled out a piece of paper I was going to use, and then I wrote on it.

MS. MOORE: Do you have a pen?

COURT REPORTER: I do. Do you want colors, magic markers, pencils?

MS. MOORE: A couple colors would be good.

* * *

[p.80]

trying to tell me get on the ground. But at thi -- the point I say -- I said something, I say, what's going on or something like that. I can't remember my exact words. I think it was, what's going on. They kept yelling at me to get on the ground, get on the

ground, and trying to foot sweep me again. And finally, I -- as that short period of time went by, my -- I -- I -- I -- you know, I was like, whoa, you know, I'd better comply with what these guys are saying. They -- they -- they mean business. So still not knowing what's going on, I complied and got down, started getting down to my knees while they were jumping on me and trying to force me down on the ground. The reason why I was going so slowly is because I have back injuries and -- and I didn't want to further hurt my -- my back by just flopping on the ground, so I went down very slowly.

Q So you controlled the speed at which you were taken down to the ground?

A I -- I tried to. I didn't -- not really control. It's just, I didn't flop right on the ground. I guess you can say it's controlled. I -- I went down with them pushing on me.

Q All right. So I'm going to ask you a few more questions about that. So when you first approached

* * *

[p.91]

A Excuse me.

MR. WILSON: That's 2.

COURT REPORTER: Thank you.

MR. WILSON: That's 1.

COURT REPORTER: Thank you.

Q Did Trooper Weight -- did the -- did -- when he pushed you, were you hurt?

A Explain to me where you -- what do you mean? Where was I -- was I hurt by him? Was I hurt before that?

Q Were you -- no, were you hurt by him?

A No, I mean, it didn't -- it didn't hurt me. I mean, as far as, you know, him striking me, I felt it, and there was pressure when he -- when he hit me, but I -- I wasn't injured.

Q When Sergeant Nieves took your -- well, first let me ask you this. When you approached Trooper Weight and you were standing by Trooper Weight and McCoy Walker, did you see any other trooper within 20 feet of you?

A I did not.

Q Where was the nearest trooper, do you know?

A I do not know.

Q Did you see any camera in the vicinity?

A I did not.

Q At the point Sergeant Nieves took your arm, he took your left arm, is that correct?

* * *

[p.100]

And why am I being arrested? And -- and then he goes -- and then he says, you're done. And I go, no,

I'm not done. And he shuts the door. And that was the last time I remember seeing Trooper Nieves.

Q Did you speak to Trooper Weight at any time after the arrest?

A I do not recall.

MR. WILSON: Ms. Moore, can I make one point for you? Just in terms of, if you could consider what he said there an amendment to his depo – or his interrogatory responses. There was a spot in there where, you're done and this and that, was a little confusing in his interrogatory response and.....

MS. MOORE: If you want to ask follow-up questions, you're free to do that and.....

MR. WILSON: Okay. That's fine. I'm not going to ask him a question. I'm just letting you know.....

MS. MOORE: Well.....

MR. WILSON: I'm asking you to consider that an amendment to his response.

MS. MOORE: And you can amend the responses.

MR. WILSON: I just did.

Q So have you had any medical care at all associated with your arrest?

A No.

[p.101]

Q Are you claiming that you were – had any physical injuries from the arrest?

A Physical? No.

Q Yes. Are you saying -- are you shaking your head, no?

A I said, no.

Q When is the first time you saw a videotape of the arrest?

A I want to say it's six months later, roughly.

Q So if the arrest was in April, that would be May, June, July, August, September -- like October 2014?

A Roughly.

Q And where did you -- how did you see it? How did it come about?

A My -- my friend, Alan Crow -- excuse me. My friend, Alan Crow had come acrossed [sic] it on YouTube.

Q And what did he say to you?

A He made me aware of -- this was the -- he thought this was the video of me being arrested at Arctic Man.

Q Did you -- then did you go on YouTube and watch it yourself?

A He sent me a link, yes, and then I did.

Q And that was while your criminal case was pending, correct?

A That's correct.

Q And was that the link that -- who uploaded -- who put

* * *

Exhibit G

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CIVIL ACTION NO.: 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants	)

DECLARATION OF BRYCE L. WEIGHT

1. I have been a trained law enforcement officer for more than fourteen years. I joined the Air Force Security Forces in 2001 and completed the military security forces academy in 2002. I completed the Alaska State Trooper academy in 2007, where I was ranked number two in my class. I also graduated from college in 2007 with magna cum laude honors. I have an advanced police certificate from the Alaska Police Standards Council. I worked for the State of Alaska Airport Police and Fire Department for approximately six years, after which I joined the Alaska State Troopers. As a trooper, I have been a Field Training

Officer since 2012 and I have acted in the capacity of OIC (officer in charge) in the absence of a supervisor on duty in Palmer during the busiest shift in B Detachment, which is the busiest AST post in the state. I am also employed as a firearms instructor with the Alaska Air National Guard. My duties include teaching use of force to military personnel. My deposition has been taken in this case and this declaration has been requested by counsel to supplement that in support of a motion for summary judgment.

2. I was on patrol at Arctic Man 2014. Trooper Miner and I saw several minors at large party on the runway. Most people at the party appeared to be drinking alcohol. Several of the minors ran when they saw me but I caught a couple after chasing after them and took them to Trooper Miner for MCA processing. When Sgt. Nieves arrived on scene, I reported this to him. Trooper Miner continued to process the underage drinkers while I looked for other minors at the party who might have been drinking alcohol. I did not see Sgt. Nieves' contact with Russell Bartlett before Bartlett approached me.

3. I contacted an additional teen in the crowd and it was determined that he had been drinking. I then contacted another teen and asked him to step away from the crowd because the music was loud and I wanted to determine if the smell of alcohol was still about him when he was away from the crowd. The teen was cooperative and willing to speak with me. Before I could complete my conversation with the teen, Russell Bartlett approached me walking quickly and with an angry look on his face. Holding a beer with his left hand, Bartlett got close to me and the teen and yelled

at me that I had no business talking with the teen and he would not allow it. He put his right hand up toward my face pointing. I had no prior contact with Russell Bartlett before that.

4. Bartlett never said anything about a parent or guardian. He effectively demanded that I get out of there and that I had no business talking to this kid. I could barely get a word out before Bartlett interrupted me. Bartlett was obviously intoxicated. I tried to explain to him what I was doing and why. I found that speaking with him was futile because he continued to interrupt me and talk over me. His conduct and presence prevented me from conducting my investigation. He was within my reactionary gap, and due to his behavior, I perceived him to be a clear threat. A safe distance would be one that would give a trooper sufficient space to react to a potential threat. I tried to advise him to get back, to move back, to stop interfering, but he was talking over me. His escalating voice, his look of anger, his body language all appeared hostile and I interpreted them as pre-assault indicators. An open-palm push is taught in training as a tactic that can be used to safely move someone back. Although I am taller than Bartlett, he appeared to outweigh me. Bartlett appeared to be intoxicated; people under the influence of alcohol and drugs are unpredictable and often uncooperative.

5. When I realized that Sgt. Nieves had arrived and had taken hold of Bartett's left arm, I moved forward to assist. Sgt. Nieves issued clear commands to Bartlett to go to the ground, which he did not comply with. I took Bartlett's right arm and Bartlett turned toward Nieves and then me, tensing his arms. I attempted a

leg sweep and attempted to use an arm bar control. Bartlett went first to his knees and then to all fours, but continued to tense his upper back and neck against our efforts to gain compliance. At one point when I put my hand on the back of his neck, he was strongly resisting my downward pressure, and Sgt. Nieves' head was directly above Bartlett's head. The attached series of thirteen screen shots taken from the KTVA video are true and accurate images of me and Sgt. Nieves. The screen shots show that our heads were above Bartlett once he was on both knees and that at times Sgt. Nieves' head was close to Bartlett's head and also directly above his head, all the while Bartlett was using upward force against significant downward pressure from my right hand and my body weight. It is my understanding that these screen shots were prepared directly from the KTVA video and that they are continuous and in chronological order 1 – 13 with no intervening screen shots omitted.

6. Sgt. Nieves was not with me when I first approached the teen or when Bartlett first approached me. I do not recall being consciously aware that the news was filming any part of Bartlett's arrest as it was occurring. Because I perceived Bartlett to be an immediate threat, my focus was on him.

7. All reports generated at Arctic Man had to be completed before we were done with our shift. A true and accurate copy of my AST report dated April 13, 2014, is attached hereto as Attachment 1. Because some force was used to arrest Bartlett, I submitted an internal use of force report. A true and accurate copy of my April 15, 2014, use of force report is also attached hereto as Attachment 2. I did not view the KTVA video

before these reports were submitted and I had no idea what, if anything, the KTVA video captured. During the criminal case, I was copied on emails that Sgt. Nieves and Trooper Miner sent in response to the DA's office questions about whether someone was videotaping Bartlett's arrest.

8. I have seen the KTVA video since Bartlett's arrest. It does not show Bartlett walking toward me. The view of the scene that is depicted is not from the same perspective that I had on the scene, which includes not only what I could see, but also what I could hear and sense. The video shows that Bartlett was close to me before I moved him back. It also shows that Bartlett's conduct caused me to stop talking with the teen. The video shows that Bartlett has a beer in his left hand. It shows the back of Sgt. Nieves as he is approaching within moments of me pushing Bartlett back. My first conscious realization that Sgt Nieves was on scene occurred about when he took Bartlett's arm and gave Bartlett orders. The longer KTVA video does not show Bartlett's right hand, at least partly because the teen is blocking the view. My view of Bartlett's hands was not blocked; Bartlett's right hand was up and near my face. The video shows that Bartlett after not complying with verbal commands to go to the ground, tensed throughout the arrest and went gradually to the ground. At times both Sgt. Nieves and I were near or above Bartlett's head during that process. I recall that it took effort to gain Bartlett's compliance. I do not recall Bartlett being hurt in any way, which the video confirms.

9. I have read ADA Beard's affidavit and I have viewed the enhanced video that he refers to in

paragraphs 6 and 11, which appears to be a slow motion version of a small portion of the other video. The slow motion video shows Bartlett's right hand was already up the moment I placed my palms on his chest, although the view filmed is not as clear as the unblocked view and perspective that I had.

10. At no time did I act with malice toward Russell Bartlett. I did not know Russell Bartlett. My actions toward him were strictly professional, followed my training, and were based on my perceptions at the scene. I believed that I used reasonable force in moving Bartlett back with a single push, which protected all three of us who were within striking distance (me, the teen, and Bartlett). The push did not hurt Bartlett. And Sgt. Nieves and I used reasonable force in arresting Bartlett. He went gradually to the ground and no one was injured. I believe that we had probable cause to arrest Bartlett.

11. I do not recall whether I assisted in handcuffing Mr. Bartlett. If I did, I would have used standard cuffing techniques. I had minimum contact with Bartlett after the arrest. At no time during my contact with Mr. Bartlett did he complain that the cuffs were on too tightly or uncomfortable in any way. Nor did I hear Mr. Bartlett request me or any other trooper present to loosen or adjust his cuffs.

12. At the time of Bartlett's arrest in April 2014, I had never in the line of duty used OC spray, a taser, or discharged my side-arm.

The above twelve paragraphs complete this declaration, and I declare under penalty of perjury that the foregoing is true and correct.

/s/Bryce L. Weight
Bryce L. Weight

JA 230

Exhibit G Attachment 2

SOA 0433 - SOA 0439

Use of force IA No: UOF2014-0069 Received: Apr 15, 2014

Case No: AK14025280

Type of service being performed at time of incident: Arrest

Reason for use-of-force: Officer Safety

Officer assessment of citizen condition: Alcohol

Citizen was injured: No

Citizen was taken to hospital: No

Citizen was charged/arrested in relation to the incident: YesOfficer was injured: No

Officer was taken to hospital: No

Distance Officer was from Involved Citizen: 1 feet to 3 feet

Involved Citizen Build: Large

Involved Citizen Height: 5'7" to 5'9"

Involved citizen:

Russell Paul Bartlett

Resistance(s):

Non-Compliance

Charges against citizen in relation to the incident:

Misdemeanor

Linked address(s):
Home Address: 4040 Old Wood Road Ester AK 99709

Linked phone(s):
Home Phone: (907) 347-1421

Officers involved:

Trooper Bryce L Weight [BLW1/308024]

Officer current info:

Division: State Troopers
Bureau:
Section:

Snapshot - officer information at time of incident:

Badge/ID no: BLW1
Division: State Troopers
Bureau:
Section:
Detachment: B
Post: Palmer
Rank/title: Trooper
Age: Years of employment: Years with unit:
Off duty: Off duty employed:

Use(s) Of Force:

Unarmed: Effective

Sergeant Luis A Nieves [LAN1/305069]

Officer current info:

Division: State Troopers
Bureau:
Section: Recruitment

Snapshot - officer information at time of incident:

Badge/ID no: LAN1
Division: State Troopers
Bureau:
Section: Recruitment
Detachment: HQ
Post: Anchorage
Rank/title: Sergeant
Age: 44 Years of employment: 7 Years with unit:
Off duty: Off duty employed:

Use(s) Of Force:

Unarmed: Effective

Summary:

On 4/13/14 at approximately 0150 hours, I contacted a large party in the Artic Man event area to investigate minors consuming alcohol. At approximately 0157 hours Russell P. Bartlett attempted to stop me from my investigation. I was contacting a 16 year old male. I asked the 16 year old to step to the side of the party so I could speak with him (music was very loud and I smelled alcohol). Once off to the side Russell Bartlett approached me in a hostile manner. I observed him walking towards me with a look of

anger on his face and a quick pace. Bartlett was placing himself and his arms between me and juvenile yelling at me that I had no business contacting the juvenile and that he would not allow it. He put his hands very close to my face, pointing. I attempted to explain to Bartlett what I was doing and why. Bartlett was obviously upset and intoxicated (strong smell of ETOH, slurring, beer in his hand). I could barely get a word out before being interrupted. It was obvious to me that no matter what I said Bartlett was not going to agree and allow me to conduct my investigation. Bartlett came closer to me. I took this act as aggression and I felt threatened. I felt as if Bartlett was about to punch me. I pushed Bartlett back to create distance between him and me. Sgt. Nieves then went hands on with Bartlett, trying to gain control. I also went hands on, and conducted a leg sweep of his right leg. Bartlett continued to not comply, and resist by force. Sgt. Nieves threatened the use of a taser and Bartlett complied at that time. Bartlett was arrested for disorderly conduct and resisting arrest.

When/where:

Date/time occurred: Apr 13 2014 01:50

Home Address: 4040 Old Wood Road Ester AK 99709

Status/assignment information:

Status: Completed

Opened: Assigned: Due: 04/15/2014 Completed: 05/26/2014

Disposition: Within Policy

Unit assigned: Un-assigned
Handled at field/unit level: No
Investigator assign: Un-assigned
Supervisor assign: Un-assigned
Source of information:

Organizational component(s):

Division: State Troopers
Detachment: B
Post: Palmer

BlueTeam chain routings

Apr 15, 2014 21:34: Sent from Trooper Bryce L Weight [BLW1/308024] to Sergeant Luis A Nieves [LAN1/305069]

Instructions:

Blue team use of force incident for your review.

Reviewed by Sergeant Luis A Nieves [LAN1/305069] on Jan 16, 2015 at 16:10

Decision: Approved

Reviewer comment:

[Forwarded by Sergeant Luis Nieves]

CC(s) of this routing were sent to the following:

Apr 16, 2014 08:57: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

LT here is the blue team report as requested for the Arctic Man incident.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 10:07

Decision: Not approved
Missing Information

Reviewer comment:

Sgt. Nieves: Please ensure that all audios for this contact are attached. If there are no audios, for whatever reason, then please forward this back to me.

Apr 16, 2014 10:07: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Sergeant Luis A Nieves [LAN1/305069]

Instructions:

Please add the audio to this incident. If there is no audio, then forward back to me.

Reviewed by Sergeant Luis A Nieves [LAN1/305069] on Jan 16, 2015 at 11:26

Decision: Approved

Reviewer comment:

No audio.

Apr 16, 2014 11:26: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

> No audio. Our new recorders (Olympus DM-620) do not have the remote controls to activate in a dynamic situation. We must manually pull them out of our vests/shirt pockets, take them off hold (side button), press record (front button on face of recorder; poor design that if not on hold will either start or stop recording due to all control functions being on the face of the recorder [stop, record, pause]), put the recorder back on hold, then return it to our pocket. The current remotes available for this recorder retail at $300.00 (DPS supply does not provide this accessory). No audio due to technical design failure.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 08:19

Decision: Approved

Reviewer comment:

[Forwarded by Lieutenant Lawrence Piscoya]

Apr 18, 2014 08:19: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Captain Burke W Barrick [BWB0/250337]

Instructions:

> I asked Sgt. Nieves a few questions. He indicates the person is not known by the campsite renters,

where the party was occurring. He was heavily intoxicated and Sgt. Nieves indicates he was getting closer and closer to the troopers face from his point of view. The subject was aggressive and intoxicated. By the time, Sgt. Nieves arrived, Trp. Weight pushed the subject away and they took him to the ground. Trp. Weight indicates he felt threaten with Mr. Bartlett's aggressive manner as he approached. He stated in his report that at one time, he felt that Mr. Bartlett was going to hit him and felt threatened.

Reviewed by Captain Burke W Barrick [BWB0/250337] on Jan 16, 2015 at 15:12

Decision: Approved

Reviewer comment:

[Forward to OPS by Captain Burke Barrick]

May 28, 2014 07:26: Sent from Investigator Jeffrey R Brown [JRB1/313495] to OPS Staff

Instructions:

Rerouted through the majors.

Reviewed by Investigator Jeffrey R Brown [JRB1/313495] on Jan 16, 2015 at 08:10

Decision: Approved

Reviewer comment:

[Forward to OPS by Investigator Jeffrey Brown]

CC(s) of this routing were sent to the following:

Jun 04, 2014 18:39: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

For approval and forward to OPS

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 10:44

Decision: Not approved
Other

Reviewer comment:

This is a duplication. Please delete.

Jun 26, 2014 16:10: Sent from Sergeant Luis A Nieves [LAN1/305069] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

For your approval.

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 10:43

Decision: Approved

Reviewer comment:

for submission.

Aug 19, 2014 10:43: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Lieutenant James A Helgoe [SJAH0/283214]

Instructions:

For submission.

Reviewed by Lieutenant James A Helgoe [SJAH0/283214] on Jan 16, 2015 at 14:53

Decision: Approved

Reviewer comment:

[Forwarded by Lieutenant James Helgoe]

Aug 19, 2014 10:44: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Lieutenant Derek J DeGraaf [DJD2/291490]

Instructions:

This is a duplication of the UOF prior. Please do not retain and delete.

Reviewed by Lieutenant Derek J DeGraaf [DJD2/291490] on Jan 16, 2015 at 08:54

Decision: Approved

Reviewer comment:

[Forward to OPS by Sergeant Derek DeGraaf]

Aug 19, 2014 14:53: Sent from Lieutenant James A Helgoe [SJAH0/283214] to Lieutenant Lawrence R Piscoya [LRP0/264203]

Instructions:

For review

Reviewed by Lieutenant Lawrence R Piscoya [LRP0/264203] on Jan 16, 2015 at 15:02

Decision: Approved

Reviewer comment:

This is a duplication. Please delete this second copy.

Aug 19, 2014 15:02: Sent from Lieutenant Lawrence R Piscoya [LRP0/264203] to Lieutenant Derek J DeGraaf [DJD2/291490]

Instructions:

This is a duplication of another UOF report that is identical. Please delete.

Reviewed by Lieutenant Derek J DeGraaf [DJD2/291490] on Jan 16, 2015 at 08:54

Decision: Approved

Reviewer comment:

[Forward to OPS by Sergeant Derek DeGraaf]

Entered via BlueTeam by: Trooper Bryce L Weight [BLW1/308024] on Apr 15, 2014 at 19:58

Exhibit J

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CIVIL ACTION NO.: 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

AFFIDAVIT OF RAYMOND BEARD

STATE OF ALASKA	)
	) ss
JUDICIAL DISTRICT	)

1. I am an Assistant District Attorney for the State of Alaska and was assigned to prosecute *State of Alaska v. Russell Paul Bartlett*, Case No. 3GL-14-00025CR. I have been requested to submit this affidavit in connection with Bartlett's civil lawsuit against Bartlett's arresting officers, Alaska State Troopers Luis Nieves and Bryce Weight. I have

personal knowledge of the facts in this affidavit and I am competent to testify.

2. I have served as an Assistant District Attorney for the State of Alaska since February of 2014. My work has involved a range of misdemeanor and felony criminal cases. I am presently assigned as the primary prosecuting attorney for all criminal cases before the Honorable David Zwink in the Palmer District Court, and before the Honorable Daniel Schally and Michael Franciosi in Glennallen Superior and District Courts. The Glennallen Court covers the Paxton area where Mr. Bartlett's case originates.

3. My legal experience and my prior law enforcement experience informed my perspective and analysis of Bartlett's case. Before attending law school, I served about seven years in the United States Air Force as an Advanced Law Enforcement Specialist and Military Working Dog Handler. I am a former instructor of the United States Air Force Security Police Academy and a former instructor of the Department of Defense Dog School. After my military service, I served about nine years as a Police Officer and Field Training Officer with the San Antonio Police Department in Texas, and later about two years as a Police Officer with the Anchorage Police Department in Alaska. I have significant training and experience in police use of force policies, and I have significant experience working large gatherings and festivals where excessive alcohol use is expected.

4. The criminal case against Russell Bartlett arose out of Arctic Man 2014. According to reports, Alaska State Troopers were investigating a group of minors consuming alcohol at a large party. Based on reports,

Bartlett interfered with troopers' activities, threatened Trooper Weight, and was subsequently arrested for disorderly conduct and resisting arrest. Records show that the troopers processed and released Bartlett at the Arctic Man event.

5. Alaska State Troopers refer criminal cases for prosecution to the appropriate District Attorney's Office of the Criminal Division of the Alaska Department of Law. Each case is assigned to a criminal prosecutor who reviews the charging documents and the submitted evidence. The assigned prosecutor has discretion to accept, amend, add, or reject charges as appropriate based upon the law and upon department policy. After conducting an initial review of Bartlett's case, I accepted for prosecution the charges of Disorderly Conduct and Resisting Arrest.

6. My contacts in prosecuting the case were Trooper Sergeant Luis Nieves, Trooper Bryce Weight, and Trooper Joel Miner. Later in the case, I learned that Bartlett claimed that someone had videotaped the arrest. My office followed up on that claim through paralegal Sherese Holliday. Sergeant Nieves and Trooper Miner indicated that one of the news stations may have a video. My office obtained a copy of the edited KTVA video, which I understood was aired as part of a story about troopers at Arctic Man. The edited video depicts images of Sergeant Nieves and other troopers patrolling Arctic Man. A portion of the video shows a portion of Sergeant Nieves' and Trooper Weight's contact with Bartlett. I requested the uncut footage from KTVA, but I was informed that it was no longer available. I was, however, able to obtain from KTVA an enhanced high resolution version of the

edited video. The KTVA video corroborates the troopers' version of the arrest. Bartlett was standing very close to Trooper Weight and to the minor that Trooper Weight was interviewing. Bartlett's left arm was fully extended downward at his side. He was holding a beer can in his left hand. The enhanced video reveals Bartlett's right hand was raised about chest level and was near Trooper Weight when Trooper Weight pushed Bartlett away.

7. I understood that Bartlett asserted that Trooper Weight assaulted him and then covered up that alleged assault by arresting Bartlett. At no time during my work on the case was I persuaded by this argument. I knew that Trooper Weight had prior experience as an airport safety officer and therefore would have had considerable experience communicating with the public. His open-handed defensive response to Bartlett, as shown on the video, was measured and controlled and it did not appear to hurt or injure Bartlett in any way. Based upon my prior law enforcement training and experience, I believe that Trooper Weight reasonably feared that Bartlett's right hand would either grab or strike him. Trooper Weight's defensive response prevented Bartlett from completing the expected contact and it created a safe distance between Trooper Weight and Bartlett. Additionally, during a disputed discovery matter in the criminal case, the superior court viewed Trooper Weight's personnel file *in camera*. The court found "[t]here is nothing in the material that is remotely relevant and discoverable" and the material was not released to Bartlett.

8. On or about December 23, 2014, Bartlett's counsel tendered a proposal to dismiss the case. The

State responded that it would agree to dismiss the case subject to Bartlett agreeing to not institute civil action against the State or any of its involved officers. I proposed that agreement simply because Bartlett's counsel had expressed his belief that the officers assaulted Bartlett. Based upon my conversations with Bartlett's counsel, I suspected that he would initiate a civil suit if the State dismissed the criminal charges. Although I believed there was absolutely no merit to support such a claim, I anticipated that the District Attorney would not approve my travel to Glennallen to conduct a trial on a charge of disorderly conduct and I wanted to protect the State and the officers from a frivolous civil suit. On or about January 27, 2015, Bartlett declined the offer but renewed the request that the State dismiss the criminal matter notwithstanding whether or not a civil action would be filed. On January 27, 2015, I declined writing, "because the State believes the troopers made a valid arrest, it would not agree to dismiss the case and leave the troopers exposed to a potential civil lawsuit. The State indicated that it would agree to dismiss if the possibility of future civil suit was closed. If your client declines dismissal under such terms, then the criminal matter will proceed."

10. On January 28, 2015, I contacted Bartlett's counsel regarding the high resolution copy of the Arctic Man video. Again, the high resolution version of the video made the State's case even stronger. I was confident that the State would prevail at trial and Bartlett would be convicted of disorderly conduct.

11. Ultimately, travel to Glennallen to conduct the trial was not approved due to budgetary issues, so the State dismissed the case. I believed at the time,

and I continue to believe, that probable cause existed to charge Bartlett not only with disorderly conduct and resisting arrest, but also with fear assault and attempted assault. To my knowledge the troopers involved in Bartlett's arrest did not withhold any material information from me. The KTVA video confirmed the troopers' versions of the contact with Bartlett, which was further solidified by the enhanced video I obtained.

/s/ Raymond Beard
Raymond Beard

SUBSCRIBED AND SWORN TO 11/18/2015 at Palmer, Alaska.

[SEAL] /s/Deborahа A. Burchell
Notary Public in and for the State of Alaska
My commission expires: with office

Exhibit A

In The Matter Of:
RUSSELL BARTLETT v.
LUIS NIEVES, et al.,

LUIS NIEVES
July 31, 2015

Metro Court Reporting
405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
metro@gci.net

* * *

[p.77]

Q ..... before .....

A This part to that and you'll see -- well, that's why I positioned myself around his back 'cause I don't want to get hit in the face.

Q By what?

A By his fist.

Q So, we've already seen the part where he swung his right fist at you?

A Yes, sir. He -- from what I can see he's getting ready to swing and then that's why I stepped around the back of him and that's why I'm -- I get behind him.

Q Okay. And then is this where he's fighting with you?

A Yes, sir. He's tensing up the whole time, that's stuff that you may or may not be able to see on video but he's tensing up, he's pulling away from us and we're holding on for everything we've got on him.

Q Do you give people a second to kind of digest what's occurring whenever you grab a hold of somebody like that?

MS. GALBRAITH MOORE: Objection, foundation.

A He knew he was being contacted by Troopers. At that point there's no -- he was being placed under arrest. He -- he was already creating a hazardous situation, he's going to jail.

Q (By Mr. Wilson) So, at -- I mean, at the very moment that you guy -- that Trooper Weight decides to push Mr.

[p.78]

Bartlett, Mr. Bartlett is standing there, correct?

A No, he's trying to clear Mr. Bartlett from attacking him which is what my perception was as well. I -- we both felt that -- I felt that Trooper Weight was in danger and Trooper Weight clearing him that's clear to me that Trooper Weight also felt that he was in danger at that point. Your client was being unreasonable and was creating a hazardous situation and it was only a matter of time before he struck my Trooper so we stopped it.

Q You're not a mind reader, are you?

MS. GALBRAITH MOORE: Objection, form of the question .....

A Unh-unh (negative).

MS. GALBRAITH MOORE: ..... and foundation.

Q (By Mr. Wilson) I just wanted to make sure that we're all on the same page.

A Well, that's kind of an insulting question but .....

Q Are -- do you claim to have some ability to read people's minds?

MS. GALBRAITH MOORE: Same objection.

A It's a -- that's an offensive .....

MS. GALBRAITH MOORE: It's an .....

Q ..... question.

MS. GALBRAITH MOORE: ..... objective standard, ...

MR. WILSON: Well --

* * *

[p.97]

A Yeah. It .....

Q Are you telling me it's unimportant that Trooper Weight told Mr. Bartlett to leave before he pushed him in the chest?

A Ah, this is to the best of his recollection. You're going to have to interview Trooper Weight.

Q Well, I'm asking you the question. Okay?

A And -- and my answer to that is that this appears to be to the best of his recollection at the time.

Q Would you agree with me that that certainly is an important detail in this situation here?

A It's an addition -- it -- it's an -- an additional important piece but there's more than enough here.

Q And you would agree with me that again if we're talking about what you were trained, et cetera, that a person, a police officer would want to put that important detail in his police report, correct?

A And I think that he -- he did the best that he could at 4:00 o'clock in the morning if we're looking at the facts.

Q The -- the -- Trooper -- I want to make sure I understand this and make sure -- did -- do -- do you claim that Russell tried to head butt you?

A It was hard to determine. I -- I -- I believe that he was trying to hurt me and hurt my -- my Trooper.

[p.98]

Q I have a very specific question for you.

A Do I believe that he was trying to head butt me?

Q Do you believe that Mr. Russell attempted to head butt you?

A Yes, based off of my Trooper's observations, yes.

Q Did you perceive something? Let's not -- let's set aside for a minute what Trooper Weight says to you.

Okay. Did you perceive that Mr. Bartlett tried to head butt you?

A No, I perceived .....

Q Mr. Bartlett?

A ..... he was trying to punch me in the face.

Q Okay. But -- so, is the answer you did not perceive that Mr. Bartlett tried to head butt you?

A It's hard to say.

Q Well, it would be a yes or a no.

A I have to -- in the -- in this case I have to go off of what my Trooper's observation were.

Q Mr. Nieves, I'm asking you what you perceived, okay? I don't want to hear about what Trooper .....

A Yeah, but the .....

Q ..... Weight said.

A ..... Trooper .....

Q Hold -- I'm asking .....

A ..... his credibility .....

Q ..... you .....

[p.99]

A ..... is there.

Q I'm asking you what you perceived.

A I perceived that I was in danger and I .....

Q And let me .....

A ..... was going to be attacked.

Q ..... let me finish my question. I'm asking you whether you perceived what -- that Mr. Bartlett attempted to head butt you?

A I beli -- yeah, I -- I believe he may have. That's why I positioned myself behind him.

Q So, your testimony is you did perceive that Mr. Bartlett attempted to head butt you?

A My testimony is that I believed that he was going to hurt me by any means necessary to prevent me from placing him under arrest.

Q Okay. Let -- I'm going to -- okay. I just -- can you just answer my question if you could, please?

A I'm answering it.

Q Okay. Did you perceive Mr. Bartlett to do something that you perceived as an effort to head butt you?

A It's hard to say now. I mean, I -- what I know is that I perceived based off of looking at the video standing behind him that he was getting ready to punch me.

Q Did you perceive that Mr. Bartlett attempted to head butt you?

[p.100]

MS. GALBRAITH MOORE: Objection, asked and answered.

MR. WILSON: Not asked and answ -- asked many times, not answered yet.

A I believe he may have ha-- harmed me in any which way that he could of. So, at that point I thought that he was going to harm me in any way that he could have and that's why I positioned myself the way I did behind him and that's why we did everything we could to get him down to the ground and that's why we placed him in custody.

Q (By Mr. Wilson) I'm going to ask you one more time and then I'm going to take this -- when we get this deposition taken I'm going to go to the court and I'm going to have to take -- raise this issue with the court. Okay. I want you to just answer my question.

A Okay.

Q As you were at the Arctic Man did you perceive in the course of your interaction with Mr. Bartlett that Mr. Bartlett attempted to head butt you?

MS. GALBRAITH MOORE: Objection, asked and answered.

A I've answered you already. I believe .....

Q (By Mr. Wilson) That's a yes or a no.

A ..... I believe that he would have head butted me at one point or another.

Q I'm not asking you to try to read his mind, my question to you is whether or not you perceived an action on the

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part of Mr. Butler -- Mr. Bartlett that you interpreted as an attempt by Mr. Bartlett to head butt you?

A I have to say yes based off of my reaction.

Q And this attempt to head butt you is -- would have occurred on the time frame that we have this video here, correct?

A Right.

Q Did you perceive some point in time where Mr. Bartlett was quotes, unquotes: His chest was almost touching Mr. Weight?

A He was close enough.

Q My – that's – my question is, did you perceive at some point where Mr. Bartlett's chest was quotes: Almost touching?

A Yes.

Q And is that on this video also?

A I believe it is.

(Pause - reviewing documents)

MR. WILSON: (Whispering to self).

Q As far as the policies go, isn't it the policy of the Troopers that before a Trooper engages a person physically they should verbally tell them to step back, get away from me, move on, et cetera?

MS. GALBRAITH MOORE: Objection, form, foundation.

A It would depend on the scenario. We should -- we should

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* * *

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA AT FAIRBANKS

Case No. 4:15-cv-4 SLG

[Filed March 15, 2016]

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

While at Arctic Man, Russell Bartlett attended a party at Jerry Sadler's campsite with his friend David Krack and Krack's teenage cousin, MacCoy Walker.[1] At the Sadler party Luis Nieves, an Alaska State Trooper, approached Bartlett and asked to speak with him, but

[1] Ex. A (Deposition of David Krack) [Tr. 5:16-24]; Ex. B (Deposition of MacCoy Walker) [Tr. 5:9-25].

Bartlett lawfully refused, angering Nieves.[2] Some minutes later, Bartlett observed another trooper, Brice Weight, interrogating his friend's cousin, so Bartlett approached Weight and voiced his opinion that Weight had no authority to interrogate Walker without a parent or guardian present.[3] At that point Nieves – riled by Bartlett's earlier refusal to engage him in conversation – decided Bartlett, beer in hand, was "getting ready to attack Weight," so Nieves went over to lend assistance.[4]

Emboldened by the arrival of Nieves and John Thain, a cameraman who filmed the entire altercation, Weight suddenly steps forward and forcefully shoves Bartlett without warning. The two troopers – retaliating against Bartlett for challenging their authority in front of a rolling video camera and several onlookers – take Bartlett roughly to the ground while threatening him loudly. The sudden unexpected display of force causes young Walker's pulse to quicken, and he begins to shake.[5] Bartlett can be heard on the video after his arrest incredulously demanding to know why he was arrested.[6]

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[2] Ex. C (Deposition of Russell Bartlett) [Tr. 62:1-63:15]; Ex. D (Deposition of Luis Nieves) [Tr. 65:2-66:24].

[3] Ex. C [Tr. 76:22-78:14].

[4] Ex. D [Tr. 80:4-83:12].

[5] Ex. B [Tr. 26:1-29:7].

[6] Doc 22-2, Exhibit A (video) at 02:25-02:33.

Weight and Nieves then drew up false police reports to justify their unlawful, retaliatory conduct against Bartlett, charging him with disorderly conduct and resisting arrest when no reasonable Alaskan police officer would have done so. Bartlett expended in excess of $7,000 defending himself against these baseless charges[7] and, when the charges were finally dropped after nearly 10 months, Bartlett initiated this lawsuit under 42 U.S.C. § 1983 to hold Nieves and Weight personally liable for their incompetence and knowing violations of law.

I. SUMMARY JUDGMENT STANDARD

When determining a motion for summary judgment, "courts are required to view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the [summary judgment] motion.'"[8] "In qualified immunity cases, this usually means adopting . . . the plaintiff's version of the facts."[9] Summary judgment should not be granted "if a rational trier of fact could resolve a genuine issue of material fact in the nonmoving party's favor . . . 'because credibility determinations, the weighing of the evidence, and the

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[7] Ex. E.

[8] *Scott v. Harris*, 550 U.S. 373, 378 (2007) (alterations in original) (quoting *United State v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)).

[9] *Id.* at 378.

drawing of legitimate inferences from the facts are jury functions, not those of a judge.'"[10]

"When opposing parties tell two different stories, one of which is blatantly contradicted by [an undisputed video], so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."[11] Because Bartlett is the non-movant, his "evidence . . . is to be believed, and all justifiable inferences are to be drawn in his favor."[12]

II. Construed in Bartlett's Favor, the Facts Permit a Reasonable Jury to Find that Weight and Nieves acted Unreasonably in Arresting Bartlett and Promoting his Prosecution.

The facts presented in the criminal complaint, police reports, and declarations of Nieves and Weight are directly refuted multiple times by the video evidence and witness testimony collected to date. The State attempts to portray Bartlett as boisterous, inebriated, and aggressive. But after considering the evidence presented below – including the undisputed video – reasonable jurors could conclude Nieves and Weight grossly exaggerated and deliberately mischaracterized Bartlett's conduct to justify their use

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[10] *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011) (quoting *Nelson v. City of Davis*, 571 F.3d 924, 927 (9th Cir.2009)).

[11] *Scott*, at 380.

[12] *Blankenhorn v. City of Orange*, 485 F.3d 463, 470 (9th Cir. 2007) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

of force against him, which was prompted by no more than Bartlett's questioning of their authority.[13] "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."[14] Bartlett was well within his constitutional rights to act as he did, but the reaction of Nieves and Weight was unreasonable and excessive.

A. Reasonable jurors could find that Bartlett never yelled at Nieves near Sadler's RV; that Bartlett simply refused to speak to Nieves; and Nieves took umbrage to this refusal.

There is no reasonable basis for Nieves' statement in his supplementary report that "Bartlett began to shout to Sadler and the occupants of the RV that they did not have to speak with me or allow me in the RV."[15] First, the video previously submitted to the court[16] establishes that, at least for that portion of the video during which Nieves spoke to the occupants of the RV,

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[13] *See* Ex. F (report of expert D.P. Van Blaricom) at 10 (stating that individuals who question the authority of police are much more likely to have force used against them and be arrested on trumped-up charges than those who are compliant and polite to police questioning); *see also* Ex. G (Affidavit of Van Blaricom).

[14] *Houston v. Hill*, 482 U.S. 451, 462-63 (1987).

[15] Doc. 7-1 at 4.

[16] Doc 22-2, Exhibit A (video).

Bartlett is not shouting.[17] Further, Jerry Sadler, Jr., the owner of the RV, testified at his deposition that Bartlett never shouted at anyone during Sadler's contact with Nieves.[18] This is confirmed by the Affidavit of Sierra Contento,[19] who was present in the RV and opened to door to speak to troopers. John Thain, the cameraman who filmed the video and who had followed Nieves during his patrol that night, did not recall Bartlett screaming at the RV's occupants,[20] and Bartlett also testified he did not scream at Nieves or the RV's occupants.[21] According to those present at the RV, Bartlett never hollered to them that they were not required to interact with Nieves.

After Nieves finished his contact with the folks in the Sadler RV, he approached Bartlett and stated that he wanted to ask him a few questions.[22] In response, Bartlett asked about what, and Nieves developed an attitude.[23] In light of Nieves' attitude Bartlett simply

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[17] Video at 1:54-2:00.

[18] Ex. H (Deposition of Jerry Sadler, Jr.) [Tr. 9:2-12:25].

[19] Ex. I; *see also* Ex. B [Tr. 11:13-25] (stating troopers were yelling at the RV entrance but that Bartlett was not).

[20] Ex. J (Deposition of John Thain) [Tr. 18:9-19:18].

[21] Ex. C [Tr. 68:13-69:1].

[22] Doc. 7-1 at 4.

[23] Ex. C [Tr. 62:1-63:12].

advised Nieves that he did not wish to speak with him.[24] At no time was Bartlett "hostile" to Nieves.[25]

What is more, when deposed Nieves stated that he does not make charging decisions based on whether an individual has cooperated with him.[26] But Nieves is depicted in the Arctic Man video declining to ticket a man for driving a motorbike without headlights because that man had been "so polite" to Nieves.[27] A reasonable jury could therefore infer that Bartlett's lawful refusal to speak with Nieves rubbed Nieves the wrong way and was a significant factor in Nieves decision to later rush at Bartlett, assault him, and then falsify the police report to manufacture probable cause – in part by claiming that Bartlett had earlier yelled at the RV's occupants. "[P]olice officers . . . may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity."[28]

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[24] Ex. C [Tr. 62:10-63:5]; see also Doc. 7-1 at 4.

[25] Ex. C [Tr. 62:1-63:12].

[26] Ex. D [Tr. 20:25-22:5].

[27] Video at 0:45-0:54.

[28] *Duran v. City of Douglas*, 904 F.2d 1372, 1378 (9th Cir. 1990); *see also* Ex. F at 6 ("Unnecessary use of force is often tied to an officer's adrenalin or anger.").

B. A reasonable jury could find that Bartlett did not "charge" up to Weight and Walker; that Bartlett's proximity to them was reasonable given the blaring music; and that Bartlett did not come between Weight and Walker.

When Bartlett noticed Weight speaking with Walker, Bartlett simply walked over to them.[29] Nieves writes in his supplemental report, "I observed Bartlett walking towards Trooper Weight."[30] But in his later declaration, Nieves writes, "I saw Bartlett *charge* toward Trooper Weight and a teen."[31] Weight writes that Bartlett approached him "in an aggressive manner" with "a look of anger."[32] The contact between Weight and Bartlett was observed, pointblank, by Walker and Krack, who can be seen in the video both before and after Bartlett was assaulted by Nieves and Weight.[33] Walker and Krack each testified that Bartlett did not do anything that could be perceived as threatening. According to Walker, Bartlett did not look angry, hostile, or combative, and Bartlett was not slurring his speech.[34] According to Krack, Bartlett's proximity to Weight did not appear threatening

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[29] Ex. C [Tr. 78:1-10]; Ex. A [Tr. 51:1-8]; Ex. B [Tr. 19:4-22].

[30] Doc. 7-1 at 4.

[31] Doc. 44-2 at 3 (emphasis added).

[32] Doc. 7-1 at 3.

[33] Video 2:05, 2:21.

[34] Ex. B [Tr. 22:9-24:13].

because it was necessary to communicate above the loud music.[35]

Once Bartlett arrived to where Weight was questioning Walker, Bartlett expressed his opinion to Weight that he was not allowed speak to a juvenile without his parents present.[36] While Bartlett did so somewhat loudly, the volume of his voice was necessitated by the blaring music, which had driven everyone at the Sadler party to stand close to each other to facilitate communication. In the context of the blaring music, Bartlett's voice was not louder than necessary to communicate with Weight.[37]

Weight averred in support of the complaint against Bartlett that Bartlett "put his arm between me and the juvenile and informed me that I could not speak with the juvenile."[38] Weight reiterated this assertion during his deposition,[39] but in his subsequent declaration, he simply states that "Bartlett got close to me and the

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[35] Ex. A [Tr. 35:11-21].

[36] Ex. C [Tr. at 78:12-14].

[37] Ex. A [Tr. 35:12-14] ("You had to get right next to somebody to hear what they were saying or to talk to them."); Ex. B [Tr. 26:16-17] ("The trooper was just as loud as [Bartlett] it seemed like to me. We all kind of had to raise our voices."); *see also* Ex. J [Tr. 34:24-25; 55:5-6] ("It wasn't that unusual for people to stand close because the music was very loud.").

[38] Doc. 7-2 at 5.

[39] Ex. K (Deposition of Brice Weight) [Tr. 36:20-37:19] ("[Bartlett] absolutely put himself between me and the teenager. . . .").

teen."[40] But Walker and Krack testified that Bartlett never "tried to get between [Walker] and [Weight],"[41] and the video corroborates this testimony.

Construed in Bartlett's favor, the facts establish that Bartlett approached Weight and Walker at a normal pace, that Bartlett was not threatening or aggressive but instead spoke loudly to be heard over the music, and that Bartlett never inserted himself between Weight and Walker. Bartlett merely informed Weight of his opinion that Walker, a minor, could not be interviewed without parental consent. On these facts reasonable jurors could infer that Nieves and Weight falsified their police report and complaint against Bartlett to justify their provocative conduct toward him. It is well established that police "may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment."[42]

C. A Reasonable jury could find that Bartlett's right hand only came up in reaction to Weight's shove and that Bartlett maintained the same distance from Weight until the shove.

Bartlett's right hand was never raised toward Weight in a threatening manner. Weight's initial report

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[40] Doc. 47-8 at 3.

[41] Ex. B [Tr. 22:22-23:3]; Ex. A [Tr. 53:20-21]; *see also* Ex. L (Affidavit of Russell Bartlett); Ex. F at 7-8 (highlighting false statements in police report).

[42] *Duran v. City of Douglas*, 904 F.2d 1372, 1378 (9th Cir. 1990).

is silent on this matter, and Nieves noted only that Bartlett was "within an arm's length" of Weight.[43] At his deposition Bartlett testified that his right hand rose only in reaction to Weight's shove but that before being shoved, his right hand was close to his hip.[44]

Nieves claims in the police report that "Bartlett began to close [on] Trooper Weight, resulting in Trooper Weight pushing him away."[45] The video firmly establishes that Bartlett was not closing in on Weight when he elected to shove Bartlett. In fact, the enhanced video submitted to the court establishes that the assault was precipitated by the arrival of Nieves and the video camera. The enhanced video clearly shows Weight looking up and observing Sgt. Nieves' arrival, returning his gaze back to Bartlett, and then shoving Bartlett.[46] But the arrival of another trooper should have made Weight feel safer rather than more eager to use force, and trooper policy for Arctic man – as well as common sense – recognizes that troopers are safer in pairs.[47] Believability of the defendant's version of events hinges on the fact finder accepting that the arrival of Nieves and the camera had nothing to do with Weight's assault on Bartlett: this assertion is simply not credible.

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[43] Doc. 7-1 at 3-4.

[44] Ex. C [Tr. 83:8-84:13].

[45] Doc. 7-1 at 4.

[46] Doc. 47-9 (enhanced video at 00:02-00:09).

[47] Ex. M (Deposition of Lawrence Piscoya) [Tr. 62:5-13; 63:10-15; 60:13-24]; Doc. 47 at 3 & n.6 (policy).

Weight asserts in the police report that "Russell stepped forward to where his chest was almost touching mine, and his face very close to mine. I took this action by Russell to be combative in nature. I placed both hands on Russell's chest and pushed him away from me."[48] Weight's allegations are not only disputed by the deposition testimony of Bartlett, Walker, and Krack, but they are flatly repudiated by the video. The video establishes that Trooper Weight had to step forward to shove Bartlett, that Bartlett's chest was not almost touching Trooper Weight's, and that his face was not "very close to Trooper Weight's." Bartlett was never chest to chest with Weight,[49] but was equidistant from both Weight and Walker.[50] Walker recalls that Weight had to take a step forward before shoving Bartlett.[51] In his later declaration, Weight does not allege that Bartlett was chest to chest or face to face with him.[52] Bartlett testified at his deposition that Weight "lunged *forward* at me and struck me with force with both his palms of his hands against my chest."[53]

Construing the facts in Bartlett's favor, and drawing all reasonable inferences therefrom,

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[48] Doc. 7-1 at 3.

[49] Ex. B [Tr. 22:13-18].

[50] Ex. A [Tr. 53:17-19].

[51] Ex. B [Tr. 23:15-19].

[52] Doc. 47-8 at 3.

[53] Ex. C [Tr. 84:19-20] (emphasis added).

reasonable jurors could find that Bartlett never raised his hand threateningly to Weight and that Bartlett, once he arrived at a close enough distance to communicate with Weight, never moved in any closer. The video clearly shows Weight stepping *forward* in order to shove Bartlett.

D. A reasonable jury could find that after being shoved by Weight, Bartlett did not "come at" Weight, did not throw any punches, did not attempt to head-butt anyone, and was never advised he was under arrest.

Weight writes in the police report that after he shoved Bartlett, Bartlett "came at [him] again."[54] The video flatly repudiates this assertion. Weight conceded at his deposition that this statement was inaccurate and reflected only his "belief" that Bartlett *would have* come at him again had Nieves not grabbed Bartlett's arm.[55] Weight's subjective, hypothetical *belief* that Bartlett *would have* "come at him again" has no bearing on the fact that Bartlett did no such thing.

Nieves' claim that he "immediately grabbed a hold of Bartlett and advised him that he was under arrest for disorderly conduct"[56] is also demonstrably false when compared to the video. At no time on the video

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[54] Doc. 7-1 at 3.

[55] Ex. K [Tr. 54:10-56:21].

[56] Doc. 7-1 at 4.

did Nieves advise Bartlett that he was under arrest.[57] Nieves next claims that Bartlett clenched his right fist as Nieves grabbed Bartlett's left arm.[58] Again, the video flatly contradicts this portion of Nieves' report. Nieves then asserts that he "advised [Bartlett] again that he was under arrest, as he pulled away from me, as he swung his right fist towards me."[59] Yet again, the video refutes these assertions. Nieves never told Bartlett that he was under arrest, and the video fails to reveal Bartlett pulling away from Nieves in any significant way or swinging his right fist towards Nieves. Nieves then asserts that Bartlett "continued to fight with us" until Trooper Miner arrived and Nieves threatened to deploy a taser.[60] Trooper Miner is not depicted in the video, and nothing in the video could possibly be construed as Bartlett "fighting" with either Nieves or Weight.

Weight also asserts in the police report that Nieves informed Bartlett he was under arrest.[61] Again, a review of the video establishes that this is simply not true. Weight next contends that "Russell continued to resist and struggle as Sgt. Nieves and I attempted to gain control of his arms and place him in handcuffs."[62]

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[57] *See* video at 2:03-2:33.

[58] Doc. 7-1 at 4.

[59] Doc. 7-1 at 4.

[60] Doc. 7-1 at 4.

[61] Doc. 7-1 at 3-4.

[62] Doc. 7-1 at 4.

In fact, the video establishes that after seizing Bartlett, the troopers at all times had control of Bartlett's arms and that Bartlett voluntarily put his hands behind his back so he could be cuffed. Weight also asserts that "Russell attempted to head butt Sgt. Nieves, but was unsuccessful."[63] Not only is this contradicted by Bartlett's affidavit[64] and the deposition testimony of Walker, Krack, and Thain,[65] it is flatly contradicted by the video. The subsequent declarations of Weight and Nieves, sworn to under penalty of perjury, are tellingly silent on whether Bartlett was throwing punches or attempting head-butts during the altercation.[66]

Reasonable jurors could find that Bartlett never "came at" the troopers, never threw punches, and never attempted to head-butt anyone. The only reasonable inference to be drawn from the demonstrably false statements Weight and Nieves inserted into their police report and complaint against Bartlett is that Weight and Nieves deliberately manufactured probable cause to justify their provocative conduct toward Bartlett, who was merely expressing his belief that Weight had no right to question Walker absent parental consent, and who had earlier told Nieves that he did not wish to speak with him. "[A]n expression of disapproval toward a police officer . . . f[alls] squarely

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[63] Doc. 7-1 at 4.

[64] Ex. L.

[65] Ex. A [Tr. 54:1-58:19]; Ex. B [Tr. 26:7-28:18]; Ex. J [Tr. 57:5-60:17].

[66] Doc. 44-2 at 4; Doc. 47-8 at 3.

within the protective umbrella of the First Amendment and any action to punish or deter such speech – such as stopping or hassling the speaker – is categorically prohibited by the Constitution."[67]

E. Reasonable jurors could conclude that Bartlett was not "highly intoxicated" during his interaction with Weight and Nieves.

Weight asserts in both the police report and complaint that Bartlett "was slurring his speech" when talking to Weight.[68] In his subsequent declaration Weight builds on this theme and characterizes Bartlett as "obviously intoxicated."[69] For his part, Nieves' supplementary report is silent as to whether Bartlett appeared to have been drinking.[70] But in his declaration filed with this court nearly 21 months after the altercation, Nieves avers: "I believed that Bartlett was highly intoxicated and hostile to troopers."[71]

Once again, the video directly refutes these assertions. After the arrest Bartlett can be heard disputing the reasons for his arrest, and his

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[67] *Duran v City of Douglas*, 904 F.2d 1372, 1378 (9th Cir. 1990).

[68] Doc 7-1 at 3; Doc. 7-2 at 5.

[69] Doc. 47-8 at 3.

[70] Doc. 7-1 at 4.

[71] Doc. 44-2 at 3.

enunciation is clear and unimpaired.[72] Bartlett testified at his deposition that between 5:00 and 10:00 pm on the night of his arrest, he ate dinner and drank 2 or 3 beers at his campsite.[73] Walker testified that before the party neither Krack nor Bartlett had consumed very much alcohol and that neither man appeared intoxicated.[74] Krack testified that during the night in question, Bartlett's speech was clear and his coordination was unimpaired.[75] From these facts, reasonable jurors could conclude that Bartlett was not "highly intoxicated" during his interaction with Weight.

F. Reasonable jurors could legitimately infer that Nieves and Weight willfully failed to disclose the existence of the Video because it contradicts their false version of the altercation.

The criminal complaint was filed against Bartlett on April 14, 2014.[76] In a use of force report from April 15, 2014, Lieutenant Lawrence Piscoya asked whether Nieves had audio of the arrest, to which Nieves replied in the negative, asserting that his audio recorder was

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[72] Video at 2:25-2:38. Audio from Officer Pugh, who unlike Nieves and Weight activated his recorder, captures Bartlett speaking to an officer after his arrest, and his speech is clear. Ex. N.

[73] Ex. C [Tr. 51:2-52:7]; *see also* Ex. L.

[74] Ex. B [Tr. 8:13-9:5].

[75] Ex. A [Tr. 56:6-57:8].

[76] Doc 7-2 at 1.

too cumbersome to activate before the encounter.[77] The Department of Public Safety procedure manual, however, states that "as with all suspect interviews, it is suggested that officers record the non-custodial interview whenever possible,"[78] and audio exists from two other officers who patrolled Arctic Man that night.[79] Piscoya, who has nearly 23 years' experience as an Alaska State Trooper, testified it is highly unusual to have a criminal case with no audio recording.[80]

When deposed, Nieves testified in some detail about a news crew camera man, John Thain, who had been authorized to accompany Nieves during Arctic Man. Nieves stated, "Lieutenant Piscoya directed me to have the news crew ride with me."[81] Nieves further testified that Thain had been accompanying him at Arctic Man for "several hours" and that he was aware of Thain videotaping him during the Sadler party.[82] Nieves also testified that Thain had placed a wireless mic on him.[83] According to Thain, Nieves knew Thain was filming

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[77] *Compare* Doc. 44-7 at 14-15, *with* Ex. M [Tr. 19:4-9] (troopers have never complained to Piscoya that recorders are hard to use).

[78] Ex. O at 1.

[79] Ex. N; Ex. P.

[80] Ex. M [Tr. 5:15-18] (experience); [Tr. 17:21-18:4] (more than 95% of criminal cases have audio recordings).

[81] Ex. D [Tr. 28:11-12].

[82] Ex. D [Tr. 30:2-25].

[83] Ex. D [Tr. 30:17-25].

and following him all night.[84] The police report fails to mention Thain's video at all, but a reasonably competent Alaskan trooper would have documented the existence of such a video in the police report.[85]

On May 5, 2014 Bartlett, through counsel, requested discovery from the state, including any and all videotapes taken at the scene.[86] In late May, 2014 a paralegal from the DA's office in Palmer emailed Weight and asked him whether there was any audio for the criminal case against Bartlett, and Weight promptly responded that there was not.[87] On July 16, 2014 Bartlett made a request through counsel to ADA Beard for the contact information of anyone who took video of Bartlett's arrest.[88] The next day the State's paralegal emailed Weight and Nieves and asked if "there is a video floating around of the arrest," and Nieves replied, "Channel 2 perhaps. Nothing in our possession or under our control."[89]

A month later ADA Beard finally responded to Bartlett's request, stating that there was no audio of

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[84] Ex. J [Tr. 21:20-22:23].

[85] *See* Ex. Q (Deposition of Michael Ingram) [Tr. 43:20-46:17].

[86] Ex. R at 1-2.

[87] Ex. R at 3-4.

[88] Ex. R at 5.

[89] 89 Ex. R at 6-7.

Bartlett's arrest.[90] Beard asserted he was unaware that the incident had been filmed, even though a paralegal in his own office had learned one month prior to Bartlett's request that news footage existed.[91] Beard never disclosed to Bartlett the fact that Nieves believed news footage of the incident existed. On October 1, 2014 Bartlett fortuitously found footage of his arrest on youtube and forwarded the link to his counsel.[92] When Beard finally saw the video, he emailed Nieves and stated: "I watched the video clip that is on KTVA's website. I don't like the editing of it. I would like to get the original footage."[93]

G. Reasonable Jurors could conclude that Weight and Nieves lied to ADA Beard to encourage continued prosecution of the case.

Beard contacted Weight by email asking whether Weight could identify the "unknown minor" and whether that minor had any association with Bartlett.[94] Weight replied that he had spoken with both Walker and Krack following Bartlett's arrest, but each denied knowing Bartlett.[95] In fact, neither Walker nor Krack

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[90] Ex. R at 8-9.

[91] Ex. R at 6-7.

[92] Ex. R at 10.

[93] Ex. R at 11.

[94] Ex. R at 12.

[95] Ex. R at 12.

ever made such a statement because both had attended the party with Bartlett, knew Bartlett, and were never questioned by Weight as to their relation to Bartlett.[96] On these facts, reasonable jurors could infer that Weight intentionally misrepresented Bartlett's relationship with Krack and Walker to make it appear as though Bartlett had voiced concern over a stranger being interviewed by police, when in fact Bartlett and Walker were friends.

And, as set forth above, the facts demonstrate that Bartlett never yelled at Nieves or the RV's occupants; did not position himself between Weight and Walker; never attempted to harm Weight and Nieves during the arrest; and was not highly intoxicated. From the numerous inconsistencies, embellishments, and falsehoods in the police report and complaint, reasonable jurors could infer that Weight and Nieves maliciously misled Beard to prosecute a meritless case against Bartlett.

III. ARGUMENT

To determine whether police officers are entitled to qualified immunity, courts employ a two-pronged analysis: "(1) whether the facts alleged show that the officer violated a constitutional right; and (2) if so, whether that right was clearly established at the time

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[96] Ex. A [Tr. 13:3-6]; Ex. B [Tr. 29:13-30:7] ("I would have never said that [I didn't know Bartlett], because I knew him from – we've been – we were together for at least two days prior to this incident, you know, and we've met prior at a friend's house barbeque, so . . . .").

of the event."[97] The first prong requires determining whether, "taken in the light most favorable to the party asserting injury, the facts alleged show the officer's conduct violated a constitutional right."[98] The second prong – whether the right was clearly established – requires determining "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[99] "The linchpin of qualified immunity is the reasonableness of the official's conduct," viewed objectively and "'assessed in light of the legal rules that were clearly established at the time'" of the conduct.[100]

A. Reasonable Jurors Could Find that Bartlett was Falsely Arrested.

"It is undisputed that the Fourth Amendment, applicable to the states through the Fourteenth Amendment, prohibits an officer from making an arrest without probable cause."[101] If there was no probable cause for Bartlett's arrest, Weight and Nieves may still be entitled to qualified immunity, but only if "it is *reasonably arguable* whether there was probable cause"

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[97] *Rosenbaum v. Washoe Cnty*, 663 F.3d 1071, 1075 (9th Cir. 2011).

[98] *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

[99] *Garcia v. Cnty of Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011).

[100] *Rosenbaum*, 663 F.3d at 1075-76 (quoting *Anderson v. Creighton*, 483 U.S. 635, 638-39 (1987)).

[101] *MacKinney v. Nielsen*, 69 F.3d 1002, 1005 (9th Cir. 1995).

for Bartlett's arrest.[102] In other words, "if officers of reasonable competence would have to agree that the information possessed by [Weight and Nieves] at the time of [Bartlett's] arrest did not add up to probable cause," then Weight and Nieves are not entitled to qualified immunity.[103] When "an otherwise competent officer . . . make[s] an unreasonable decision or make[s] an unreasonable mistake as to law or fact," that officer should be liable under § 1983.[104]

The probable cause analysis in the context of § 1983 involves both the facts "known to the officer at the time of the arrest" and "the criminal statute[s] to which those facts apply,"[105] meaning the criminal statutes of Alaska. "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed."[106] "Probable cause is lacking if the circumstances relied on are

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[102] *Rosenbaum*, 663 F.3d at 1076 (9th Cir. 2011) (emphasis in original).

[103] *Id.* (quoting *Jenkins v. City of New York*, 478 F.3d 76, 87 (2d Cir. 2007)).

[104] *Id.* (citing *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011)).

[105] *Id.*

[106] *McCoy v. State*, 491 P.2d 127, 129 (Alaska 1971) (alterations in original) (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)).

'susceptible to a variety of credible interpretations not necessarily compatible with nefarious activities.'"[107] While "police may rely on the totality of facts available to them in establishing probable cause, they also may not disregard facts tending to dissipate probable cause."[108] "The existence of probable cause necessarily turns upon the particular facts of the individual case, and prior decisions generally are of little help in deciding a specific case."[109]

1. Interference with an investigation is not a crime.

The State's argument is replete with the allegation that Bartlett "interfered" with Weight's ongoing investigation of Walker.[110] But the State cites no Alaska Statute criminalizing interference with a police investigation. To the extent that the State argues Bartlett's alleged "interference" establishes probable cause for his arrest, this argument should be rejected.

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[107] *United States v. Moore*, 483 F.2d 1361, 1363 (9th Cir. 1973) (quoting *United States v. Selby*, 407 F.2d 241, 243 (9th Cir. 1969)).

[108] *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1024 (9th Cir. 2009) (quoting *United States v. Lopez*, 482 F.3d 1067, 1073 (9th Cir. 2007)).

[109] *John v. City of El Monte*, 515 F.3d 936 (9th Cir. 2007).

[110] *Compare* Doc. 47 at 2 ("Bartlett interfered with a trooper's investigation"), 3, 9, 14, 22, 24, 26, 29, 35 ("Bartlett undisputedly interfered with Trooper Weight's investigation."), 45, *with* Ex. S (Deposition of Raymond Beard) [Tr. 71:7-75:15] (ADA Beard's testimony that Bartlett's interference with Weight's investigation was not a crime); Ex. M [Tr. 64:5-11] (same).

Alaska Statute 11.81.400 makes it illegal to "use force to . . . interfere with the arrest of another by a peace officer . . . ." But this statute is inapplicable because at the time Bartlett approached Weight and Walker, Weight was not in the process of arresting Walker. Weight had at best a reasonable suspicion that Walker was a minor who had been consuming alcohol, and Weight was questioning Walker to establish probable cause for a potential arrest, but no arrest occurred as Walker had not been drinking.[111]

Alaska Statute 11.56.780 criminalizes "hindering prosecution," which is defined as "render[ing] assistance to another who has committed a crime . . . with intent to . . . hinder the apprehension, prosecution, conviction, or punishment of the other person. . . ." Because Walker committed no crime, this statute is also inapplicable.

Without citing an Alaska Statute, the state cannot repeatedly imply that Bartlett's conversation with Weight was somehow criminal and therefore established probable cause under Alaska Law for Bartlett's arrest. "Criticism of the police is not a crime,"[112] and police "must respect the right of individuals in their community to question their government and the role of the police."[113]

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[111] Ex. K [Tr. 25:13-20]; Ex. B [Tr. 14:17-16]:14; Ex. R at 12.

[112] *MacKinney v. Nielsen*, 69 F.3d 1002, 1007 (9th Cir. 1995) (quoting *Duran v. City of Douglas*, 904 F.2d 1372, 1377 (9th Cir. 1990)).

[113] *MacKinney*, at 1002. The question presented to this court is not whether arguable probable cause existed to arrest Bartlett based

2. A jury must decide whether Weigh and Nieves acted reasonably in arresting Bartlett for disorderly conduct.

The State argues Weight and Nieves had probable and arguable probable cause to arrest Bartlett for disorderly conduct because Bartlett either made an "unreasonably loud noise" or "recklessly create[d] a hazardous condition for others by an act which has no legal justification or excuse."[114] But Bartlett's "act" was to approach Weight to within earshot and express his opinion that Weight had no right to question Walker absent parental authorization. Alaska's disorderly conduct statute was not meant to penalize speech: "'Noise' does not include speech that is constitutionally protected."[115] And reasonable jurors could find that

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on the clearly established law of Hawaii, *see* Doc. 47 at 24 & n.15 (citing *Locricchio v. Richards*, 94 F.3d 652 (9th Cir. 1996) (unpublished opinion)), or California, *see* Doc. 47 at 25 & n.119 (citing *Kalb v. City of Oceanside*, 2013 WL 1316674, at *7 (S.D. Cal. Mar. 29, 2013)), or Arizona, *see* Doc. 47 at 25 & n.120 (citing *Portillo v. Montoya*, 170 Fed. Appx. 453 (9th Cir. 2006) (unpublished opinion)): The question is whether Alaskan troopers Weight and Nieves had arguable probable cause to arrest Bartlett at Arctic Man under the clearly established laws of *Alaska*.

[114] AS 11.61.110(a)(1), (6).

[115] AS 11.61.110(b). Whether noise is punishable as "unreasonably loud" depends on "the nature and purpose of the defendant's conduct and the circumstances known to the defendant, including the nature of the location." *Id.* Given the blaring party music, no reasonable officer could conclude that Bartlett's conduct was "a gross deviation from the standard of conduct that a reasonable person would follow in the same situation." *Id.*

Bartlett did not "recklessly create a hazardous condition" through his speech or conduct.

a. Bartlett's speech cannot be classified as disorderly conduct.

A reasonable jury could find that no reasonable police officer would have arrested Bartlett on a disorderly conduct charge simply for vocalizing an opinion. "A policeman's special powers and training, and his constant exposure to situations where the norms of common speech are not distinguished by unvarying delicacy of expression, leave him less free to react as quickly as the private citizen to a purely verbal assault."[116] "Speech is often provocative and challenging. [But the freedom of speech] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."[117] "[T]he substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."[118]

Crawford v. Kemp demonstrates the limitations of Alaska's disorderly conduct statute when it is used to

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[116] *Anniskette v. State*, 489 P.2d 1012, 1015 (Alaska 1971) (quoting *Williams v. District of Columbia*, 419 F.2d 638, 646 n.23 (D.C. Cir. 1969)).

[117] *Anniskette*, at 1015 (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949)).

[118] *Id.* (quoting *Bridges v. California*, 314 U.S. 252, 263 (1941)).

penalize speech.[119] In that case trooper Kemp entered the Fairbanks courthouse looking for a suspect, saw Crawford, and asked him his name. Crawford replied that he did not want to give his name and asked if he was being arrested. As Kemp walked away, he read Crawford's name off a form Crawford had been filling out, and Crawford loudly proclaimed that Kemp should feel proud for being able to read over someone's shoulder.[120] The situation escalated as Kemp came close to Crawford and told him he would be arrested if he continued to speak in a disorderly manner; Crawford then asked Kemp to stop flicking spittle into his face, and Crawford was arrested under AS 11.61.110(a)(1) and (6), the same subsections of Alaska's disorderly conduct statute at issue in this case.[121] Crawford brought a number of claims against Kemp under § 1983, and the superior court granted Kemp summary judgment, holding that probable cause existed for Crawford's arrest and that Kemp was immune from suit, but on appeal these decisions were overturned.[122]

Alaska's Supreme Court reasoned that "the objective reasonableness of Kemp's decision to arrest in this case presents a question of fact that requires

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[119] 139 P.3d 1249 (Alaska 2006).

[120] *Crawford*, at 1251.

[121] *Id.* at 1252.

[122] *Id.* at 1252-53, 1259.

resolution by a jury."[123] Factors buttressing this conclusion included the inference that Crawford's actions "could be viewed as constitutionally protected verbal opposition to what he perceived as over-reaching by a police officer," and the inference that Kemp made the arrest in part because he was "annoyed" with Crawford.[124]

Here, too, the issue of whether Weight and Nieves had probable or arguable probable cause to arrest Bartlett for speaking his mind to Weight should be determined by a jury. Like Crawford, Bartlett did nothing more than verbally oppose police conduct by refusing to speak with Nieves and then later questioning Weight's authority. Nieves was clearly annoyed with Bartlett and believed he could have arrested Bartlett for refusing to speak with him earlier.[125] Bartlett recalls that shortly after his arrest, Nieves told him "bet you wish you would have talked to me now" and then added "you're done."[126] And after Bartlett's arrest, as the troopers were commending themselves on how "restrained" they had been in

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[123] *Id.* at 1256.

[124] *Id.* at 1256-58; *see also Bachner Co., Inc. v. Weed*, 315 P.3d 1184, 1190 (Alaska 2013) ("Qualified immunity 'protect[s] the honest officer who tries to do his duty,' but it does not protect 'malicious, corrupt, and otherwise outrageous conduct.'" (quoting Weed v. Bachner Co. Inc., 230 P.3d 697, 700 (Alaska 2010)).

[125] Ex. D [Tr. 65:6-17].

[126] Ex. C [Tr. 99:19-100:4].

taking down Bartlett, Nieves told Weight about his earlier encounter with Bartlett.[127]

Nieves' animus toward Bartlett can also be inferred from his police report description of his first encounter with Bartlett, whom he portrays as yelling to the partygoers not to speak with Nieves even though no one at the party recalls Bartlett doing any such thing.[128] "From the fact that [Nieves] was irritated with [Bartlett] does not flow the inevitable conclusion that [Bartlett was engaging in disorderly conduct]. Nor does it follow that a reasonable officer in [Nieves'] position would similarly be provoked to make an arrest."[129] Whether Weight and Nieves arrested Bartlett in retaliation for his speech rather than for an actual violation of Alaska the law is a question of fact that should be resolved by a jury, which could find that no reasonable Alaskan officer would have arrested Bartlett for disorderly conduct simply because of his speech.

b. Bartlett's conduct did not create a hazardous condition.

The State does not assert that Bartlett's speech created a hazardous condition to other partygoers; rather, it asserts that Bartlett's speech unnerved

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[127] Ex. K [Tr. 76:1-11].

[128] *See* discussion, *supra* Section II.A. The retaliatory animus of both troopers can be inferred from the numerous demonstrably false statements in the police report and complaint as discussed above in Section II.

[129] *Crawford*, 139 P.3d at 1257.

Weight and Nieves, police officers who should have known better than to shove and tackle someone to the ground in reaction to mere words. As the law of Alaska has long recognized, "Insofar as the theory of disorderly conduct rests on the tendency of the actor's behavior to provoke violence in others, one must suppose that policemen, employed and trained to maintain order, would be least likely to be provoked to disorderly responses."[130]

Bartlett was arrested for "recklessly creat[ing] a hazardous condition for others by an act which has no legal justification or excuse."[131] A hazardous condition is "a condition posing a risk to the health or physical safety of others."[132] Under Alaska law, one acts recklessly if he "is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur."[133] The "result" at issue here is the subjective perception of Weight and Nieves that Bartlett posed a threat. "[T]he risk [that the result will occur] must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of

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[130] *Anniskette v. State*, 489 P.2d 1012, 1015 n.5 (Alaska 1971) (quoting Model Penal Code § 250.1, cmt. pg. 14 (Tent. Draft No. 13, 1961)).

[131] AS 11.61.110(a)(6); Doc. 7-2, at 2.

[132] *Wolfe v. State*, 24 P.3d 1252, 1258 (Alaska App. 2001); *see also id.* at 1256 n.9 (noting that a "hazardous condition" "would include shouting 'fire' in a crowded auditorium" (quoting 1978 Senate Journal, Supp. No. 47 (June 12), pg. 96)).

[133] AS 11.81.900(a)(3).

conduct that a reasonable person would observe in the situation."[134]

Weight and Nieves cannot avail themselves of qualified immunity simply by asserting that they perceived Bartlett as a threat.[135] Whether Weight and Nieves' had probable or arguable probable cause to arrest Bartlett for creating a hazardous condition depends on the resolution of many factual disputes. Construing the facts in Bartlett's favor, reasonable jurors could find that Bartlett was not highly intoxicated when he approached Weight; that Bartlett came close to Weight only to be heard over the blaring music; that Bartlett expressed his opinion to Weight; and that Bartlett never raised his hand in a threatening manner to Weight.

Reasonable jurors could also find that it was unreasonable for Weight and Nieves, trained police officers, to fear Bartlett under the totality of the circumstances, or that Weight and Nieves feigned fear after the fact to justify their provocative conduct toward Bartlett. Reasonable jurors could also justifiably infer that when two troopers band together they should feel safer and more in control of the situation. The inference could also be made that the sudden arrival of Nieves and the rolling video camera caused both troopers to put on a show to look tough and

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[134] AS 11.81.900(a)(3).

[135] Doc. 47 at 6 ("Sgt. Nieves believed that Trooper Weight perceived Bartlett to be a threat."). The State's argument abounds with such beliefs and perceptions. *E.g.*, Doc. 47 at 14, 16, 18, 26, 33, 35.

impress the partygoers and the eventual video audience.[136] Police officers' mere subjective declarations that they forcefully arrested an individual because that individual put them in fear are insufficient to establish qualified immunity and cannot remove questions bearing on the reasonableness of the officers' fear from the province of the jury.[137]

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[136] *See* Ex. F at 10 (explaining that police are more likely to "punish" suspects who challenge their authority to "conclusively demonstrate '*who's in-charge*'" (emphasis in original)).

[137] *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985) ("Whether a Fourth Amendment violation has occurred 'turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time,' and not on the officer's actual state of mind at the time the challenged action was taken." (quoting *Scott v. United States*, 436 U.S. 128, 136 (1978)); *Young v. County of Los Angeles*, 655 F.3d 1156, 1163-64 (9th Cir. 2011) (holding officer's subjective belief that individual was "trying to gain a position of advantage over me" and "was going to throw broccoli at me as a distraction before assaulting me" did not entitle officer to qualified immunity on excessive force claim because credibility of officer's fear "present[ed] a genuine issue of material fact that must be resolved not by a court ruling on a motion for summary judgment but by a jury in its capacity as the trier of fact."); *Price v. Sery*, 513 F.3d 962 (9th Cir. 2008) ("[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard for their underlying intent or motivation." (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)); *Deorle v Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001) ("[A] simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern."); *see also J.H. v. Bernalillo County*, 61 F.Supp.3d 1085, 1159 (D.N.M. 2014) ("The subjective belief of an individual officer as to whether there was probable cause for making an arrest is not dispositive." (quoting *United States v. Valenzuela*, 365 F.3d 892, 896-97 (10th Cir. 2004)).

3. A reasonable Alaskan police officer would not have arrested Bartlett for harassment or assault.

The state argues that although it did not charge Bartlett with harassment or assault, Weight and Nieves had probable cause to arrest Bartlett for these crimes. "A person commits the crime of harassment . . . if, with intent to harass or annoy another person, that person (1) insults, taunts, or challenges another person in a manner *likely to provoke an immediate violent response*."[138] Reasonable jurors could conclude that no probable or arguable probable cause existed to arrest Bartlett under this statute for two reasons. First, Bartlett's intent in talking to Weight is disputed: Bartlett contends that he was merely advising Weight of his opinion that Weight could not question Walker absent parental authorization, whereas Weight contends that Bartlett spoke and acted in a threatening manner. The resolution of this factual dispute is for the jury and not this court, which must construe the facts in the light most favorable to Bartlett. Second, Weight and Nieves should not be allowed to manufacture probable cause using Alaska's harassment statute simply because both men did in fact respond to Bartlett's speech with an "immediate" and "violent" assault. As discussed above, police officers more so than ordinary citizens should be able to react calmly to verbal taunts. Just because Weight and Nieves responded violently to Bartlett's speech does not mean that reasonable Alaskan police officers confronting the same situation would have so acted.

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[138] AS 11.61.120(a)(1) (emphasis added).

The claim of Weight and Nieves that probable or arguable probable cause existed to arrest Bartlett for "recklessly plac[ing them] in fear of imminent physical injury" must also fail.[139] Those present on the scene testified that Bartlett did not seem hostile.[140] Moreover, as discussed above, the mere assertions of Weight and Nieves that they subjectively feared Bartlett because they thought he might assault them[141] are insufficient to entitle them to qualified immunity because the objective reasonableness of their fear presents a factual issue to be resolved by a jury.

4. No reasonable Alaskan police officer would have advocated for a resisting arrest charge against Bartlett.

As Bartlett has argued already, Nieves and Weight created a demonstrably false police report to justify the resisting arrest charge against him.[142] Krack, who witnessed the entire altercation, testified that Bartlett did not attempt to head-butt or throw punches at Weight or Nieves; Krack also testified he was in "shock" over how unexpected and quick the altercation was.[143] Walker's deposition testimony corroborates Krack's, and Walker also testified that the altercation caused his pulse to quicken and that he started

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[139] AS 11.41.230(a)(3).

[140] Ex. B [Tr. 23:4-7]; Ex. A [Tr. 50:21-53:12]; *see also* Ex. L.

[141] Doc. 47-8 at 3; Doc. 44-2 at 3-4.

[142] Doc. 49 at 2-4.

[143] Ex. A [Tr. 55:1-16].

"shaking" because Bartlett's arrest had scared him.[144] According to Walker, Weight shoved Bartlett because Bartlett had questioned Weight's authority.[145]

The undisputed video does not show Bartlett head-butting anyone, charging at anyone, or throwing any punches, nor does the State now argue that Bartlett took any of these aggressive actions detailed by Nieves and Weight in their police report.[146] The State also notes that one federal court has found that "natural reactions to a push or shove may constitute resistance," but this is immaterial – an analysis of probable cause in the context of a § 1983 false arrest claim hinges upon the state law forming the basis for the arrest, not upon federal excessive force common law.[147]

The crime of resisting arrest has three elements: that "police were arresting the [defendant], that [the defendant] knew the officers were arresting him, and that [the defendant] used force with the intent to

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[144] Ex. B [Tr. 28:15-18].

[145] Ex. B [Tr. 26:18-25]; *see also* Ex. F at 10-11.

[146] Doc. 47 at 21 ("Bartlett . . . pulled his arms away from the troopers, swung his arms across his body, and brought his head near theirs.").

[147] Doc. 47 at 21 & n.100. In *Crumley v. City of St. Paul* the Eighth Circuit, analyzing a § 1983 *excessive force* claim, noted that a natural reaction to an officer's push is a form of resistance, which "may justify the use of greater force." 324 F.3d 1003, 1008 (8th Cir. 2003). The *Crumley* court did not reach the merits of the false arrest claim because it determined plaintiff was collaterally estopped from re-litigating probable cause. *Id.* at 1006-07.

prevent the officers from making the arrest."[148] An arrest is "the taking of a person into custody in order that the person may be held to answer for the commission of a crime."[149] Here, no reasonable Alaskan trooper would have concluded that Bartlett knew he was being arrested as opposed to being stopped or detained or unlawfully assaulted.[150] Once Bartlett had been handcuffed, he was told he was "going to jail for harassing my troopers," a crime Bartlett was never charged with.[151] Bartlett was never informed in so many words that he was under arrest.[152] And Bartlett testified that when Nieves grabbed his arm, he "was startled and did not know who was grabbing me."[153] Once Bartlett identified his assailant as a Trooper, he began to comply with orders, but "did not know what was going on."[154] As Bartlett testified, he did not go immediately to the ground because he was

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[148] *Jones v. State*, 11 P.3d 998, 1001 (Alaska App. 2000) (construing AS 11.58.700(a)(1)).

[149] AS 12.25.160.

[150] *See State v. Miller*, 207 P.3d 541, 544 (Alaska 2009) (stating that a trooper may conduct an investigative stop when he has "a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred." (quoting *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976)).

[151] Video at 02:24-02:34.

[152] *See* discussion, *supra*, at Section II.D.

[153] Ex. C [Tr. 79:3-9].

[154] Ex. C [Tr. 79:18-80:11].

> still in shock. I didn't know what . . . was going on and I'm . . . trying to process that, so it . . . takes a few seconds to process a command like that. When someone is yelling at you, you're in a state of shock and you don't know what's going on. I was . . . confused. So then I . . . finally, after I had time to process what they were saying to me, because this happened so quick and forceful, then I . . . slid out, like I just explained to you, onto my . . . chest and down to the ground.[155]

No reasonable Alaskan trooper in the same situation would have believed that Bartlett knew he was under arrest. Nor would a reasonable trooper have believed Bartlett's actions amounted to resisting arrest.

"Mere non-submission to an arrest" that does not "actively create a danger of physical injury" to the arresting officer does not constitute resisting arrest under AS 11.56.700(a)(1).[156] *Bultron v. State of Alaska* illustrates this principle.[157] In that case Bultron "held his hands rigidly in front of him so that the officers could not cuff his wrists back"; the officers then took Bultron to the ground, but he hid one of his arms underneath his body, and it took "*several minutes*"

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[155] Ex. C [Tr. 95:6-18].

[156] *Eide v. State*, 168 P.3d 499, 502 (Alaska App. 2007) (quoting Commentary on the Alaska Revised Criminal Code, 2 Senate Journal Supp. No. 47 at 85 (June 12, 1978)).

[157] Nos. A-10477, 10478, 2011 WL 5627897 (Alaska App. Nov. 16, 2011).

before the officers were finally able to cuff him.[158] In spite of these actions, Bultron's resisting arrest conviction was overturned on appeal.

The Alaska Court of Appeals held that the resisting arrest statute was intended "*to confine the offense to forcible resistance that involves some substantial danger to the person*. Mere non-submission ought not to be an offense. One who runs away from an arresting officer or who makes an effort to shake off the officer's detaining arm might be said to obstruct the officer physically, but this type of invasion or minor scuffling is not unusual in an arrest," and ought not to be penalized as resisting arrest.[159] The *Bultron* court further distinguished "an attempt to obstruct the trooper's efforts to complete the arrest" from "a use of force *directed at the trooper*," holding that only the latter constituted resisting arrest, while the former was "mere non-submission" to an arrest.[160]

The case relied on by the State, *Velarde v. State of Alaska*, is not on point.[161] In that case Velarde disobeyed a trooper's command by driving away, and when he eventually pulled over at a gas station, he

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[158] *Bultron*, at *2-3 (emphasis added).

[159] *Bultron*, at *3 (quoting *Howard v. State*, 101 P.3d 1054, 1058-59 (Alaska App. 2004) (emphasis in original) (noting that Alaska's resisting arrest statute is similar to Hawaii's and quoting Commentary on Haw.Rev.Stat. § 710-1026)).

[160] *Bultron*, at *4 (emphasis in original) (citing *Fallon v. State*, 221 P.3d 1016, 1021 (Alaska App. 2010)).

[161] 353 P.3d 355 (Alaska App. 2015); Doc. 47 & n.99.

locked himself into the bathroom.[162] Once troopers opened the door, it took two of them "to force Velarde's hands around his back to handcuff him," and even after being cuffed, Velarde pushed his body back against a trooper, who took him to the ground with a leg sweep, but Velarde then "began kicking and trying to get back up." It was not until a third trooper arrived on the scene and employed a "leg lock" that Velarde was finally subdued.[163]

As the video shows, Bartlett – in contrast to Velarde – did not kick at Weight or Nieves or attempt to get back up once knocked to the ground. And unlike Bultron – whose arrest lasted several minutes but whose conduct did not rise to the level of resisting arrest – Bartlett, once commanded to get to the ground, complied within a matter of mere seconds, 12 at the most.[164] Nor did Bartlett attempt to hide his hands from Weight or Nieves; rather, he quickly and voluntarily put his hands behind his back to be cuffed. A reasonable jury, comparing the video of Bartlett's arrest to the false police report, could easily find that no reasonable Alaskan officer in the same situation would have concluded probable cause existed to charge Bartlett with resisting arrest.

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[162] *Velarde*, at 356.

[163] *Id.* at 359.

[164] Video at 02:10-02:12. Bartlett testified that he went to the ground somewhat slowly to avoid reinjuring his bad back. Ex. C [Tr. 80:13-17].

B. Weight and Nieves Impermissibly Retaliated against Bartlett because of his Speech.

Weight and Nieves violated Bartlett's constitutional right to freely speak his mind,[165] and this right is clearly established under the law of both Alaska[166] and the Ninth Circuit.[167] Many well-established principles of law governed the troopers' interaction with Bartlett. "Probable cause is obviously lacking when the arrest is motivated purely by a desire to retaliate against" a verbal challenge to an officer's authority.[168] "The

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[165] *See Houston v. Hill*, 482 U.S. 451, 461 (1987) ("[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers."); *accord MacKinney v. Nielsen*, 69 F.3d 1002, 1007 (9th Cir. 1995) ("Even when crass and inarticulate, verbal challenges to the police are protected."); *Duran v. City of Douglas*, 904 F.2d 1372, 1377 (9th Cir. 1990) ("[C]riticism of the police is not a crime.").

[166] *Crawford v. Kemp*, 139 P.3d 1249, 1251, 1258 (Alaska 2006) (holding that "[t]he constitutional protection of verbal communications directed at police officers was well-established" in 2001); *see also Anniskette v. State*, 489 P.2d 1012, 1013-16 (Alaska 1971) (holding that defendant could not be prosecuted for telephoning a police officer and "berating him with loud and abusive language" because such speech was constitutionally protected).

[167] *Velazquez v. City of Long Beach*, 793 F.3d 1010 (9th Cir. 2015) ("Ninth Circuit law . . . clearly establishes the right verbally to challenge the police." (quoting *MacKinney*, 69 F.3d at 1007)).

[168] *Gasho v. United States*, 39 F.3d 1420, 1438 (9th Cir. 1994); *see also Duran v. City of Douglas*, 904 F.2d 1372, 1378 (9th Cir. 1990) ("[P]olice officers . . . may not exercise their authority for personal

freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."[169] And an officer's personal offense to crude words does not criminalize those words, for to do so "would be to make . . . the [protection] of the First Amendment shift with the mentation and emotional status of the . . . listener."[170] In *Duran v. City of Douglas*, for example, the Ninth Circuit reversed a grant of summary judgment on an officer's qualified immunity claim because the officer had unreasonably pursued, arrested, and injured an individual whose only offense was drunkenly cursing and making obscene gestures to the officer from the passenger seat of his wife's car.[171]

It is undisputed that the first contact between Bartlett and Nieves occurred slightly earlier at the Sadler party when Nieves approached Bartlett, tapped him on the shoulder, and asked to speak to him.[172] When Bartlett responded "What for?" Nieves' demeanor

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motives, particularly in response to real or perceived slights to their dignity.").

[169] *Houston v. Hill*, 482 U.S. 451, 462-63 (1987).

[170] *Crawford v. Kemp*, 139 P.3d 1249, 1257 (Alaska 2006) (alterations omitted) (quoting *Annishette v. State*, 489 P.2d 1012, 1015 (Alaska 1971)); *see also id.* (noting that police "should exercise more restraint than the private citizen" to "words that provoke in the average listener an immediate violent response").

[171] 904 F.2d 1372, 1374-75, 1376-78 (9th Cir. 1990).

[172] Ex. C [Tr. 61:15-63:12]; Ex. D [Tr. 65:2-17].

became aggressive, and Bartlett then told him: "I don't want to talk to you."[173] According to Nieves, Bartlett decision's not to speak with him was not "reasonable," and therefore Nieves contemplated remaining with Bartlett to see if he "end[ed] up crossing that line and becoming disorderly," but Nieves ultimately walked away.[174] Under clearly established law, Bartlett was well within his rights not to speak to Nieves. "[W]hen an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business."[175] Recall that when deposed, Nieves denied making charging decisions based on whether an individual was cooperative or polite,[176] but Nieves is depicted in the Arctic Man video declining to ticket a man for driving a motorbike without headlights because that man had been "so polite" to Nieves.[177]

It is also undisputed that Bartlett came within earshot of Weight to opine that Weight could not question Walker without parental authorization.[178] As the two men talk, the high resolution video shows Nieves striding in and Weight's eyes registering Nieves'

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[173] Ex. C [Tr. 62:6-63:5].

[174] Ex. D [Tr. 65:13-17].

[175] *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000)).

[176] Ex. D [Tr. 20:25-21:16].

[177] Video at 0:45-0:54.

[178] Ex. K [Tr. 35:10-13]; Ex. C [Tr. 78:12-14].

approach.[179] Weight then forcefully shoves Bartlett, and Weight and Nieves wrestle Bartlett to the ground and threaten him with a taser in front of his friends and onlookers. According to Bartlett, after the melee Nieves told him: "[B]et you wish you would have talked to me now."[180]

Reasonable jurors could conclude that Nieves interpreted Bartlett's earlier refusal to speak with him as a challenge to his authority; that Nieves then rushed over to Bartlett in retaliatory anger; that Weight shoved Bartlett simply for speaking his mind; and that both men then assaulted Bartlett to vindicate what they perceived as a challenge to their authority, a taunt that they could not leave unpunished in front of several onlookers and a rolling video camera.[181] Reasonable jurors could conclude that Nieves and Weight reacted to Bartlett's speech with an unconstitutional and sophomoric display of machismo and that no reasonable Alaskan trooper would have done likewise.

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[179] Doc. 47-9 (enhanced video at 00:02-00:09).

[180] Ex. C [Tr. 99:8-25].

[181] *See* Ex. F at 10-11 ("defendant officers' response to plaintiff was more probably than not an example of what is known in the police vernacular as "*contempt of cop*" or "*having failed the attitude test.*" (emphasis in original)); Ex. M [Tr. 66:8-13] (use of force not justified if suspect is simply rude and intoxicated).

C. Suddenly Shoving and Tackling Bartlett without Warning amounts to Excessive Force

Excessive use of force claims are analyzed under the Fourth Amendment and require "a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake."[182] Factors that inform this analysis include: "the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of officers or others, and whether he [was] actively resisting arrest. . . ."[183] Of these, the most important is whether the individual posed a threat,[184] which is gauged by "the standard of objective reasonableness,"[185] i.e., would a reasonable officer have felt threatened under the totality of the circumstances.[186] "[A]n officer's failure to warn, when it is plausible to do so, weighs in favor of finding a constitutional violation."[187] An excessive force analysis

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[182] *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)).

[183] *Espinosa v. City of San Francisco*, 598 F.3d 528, 537 (9th Cir. 2010).

[184] *Young v. Cnty of Los Angeles*, 655 F.3d 1156, 1164 (9th Cir. 2011).

[185] *Deorle v Rutherford*, 272 F.3d 1272, 1279 (9th Cir. 2001).

[186] *Id.* at 1281 ("[A] simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern.").

[187] *Mattos v. Agarano*, 661 F.3d 433, 451 (9th Cir. 2011).

also considers "the availability of less intrusive alternatives to the force employed."[188] The Ninth Circuit has also remarked that "there is no mistake of law which immunizes an officer for applying force to a suspect for 'smarting off.'"[189] The Alaska Department of Public Safety's policy on use of force by troopers states that "[w]hen practical, a verbal warning shall be given before using force, to communicate that force would be used if the officer's orders were not obeyed."[190]

Blankenhorn v. City of Orange dealt with facts similar to those presented here.[191] In that case two police officers knew that Blankenhorn had been banned from a certain mall when they spotted him there talking to a friend, accompanied by his friend's younger brother and another boy.[192] An officer approached Blankenhorn, did not explain himself, and then grabbed Blankenhorn's arm; when Blankenhorn tried to pull his arm free, the officer threatened to mace him.[193] The officer asked Blankenhorn to kneel so he

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[188] *Glenn v. Washington Cnty*, 673 F.3d 864, 872 (9th Cir. 2011); *Young*, 655 F.3d at 1166 (noting "a variety of less painful and potentially injurious measures that would have been both feasible and reasonable under the circumstances.").

[189] *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011).

[190] Ex. O at 2; *see also id.* ("Officers . . . may not ever use force as punishment or in retaliation.").

[191] 485 F.3d 463 (9th Cir. 2007).

[192] *Blankenhorn*, at 468, 478.

[193] *Id.* at 478.

could arrest him, Blankenhorn refused, and he was immediately gang tackled by three officers – during the struggle the officers punched him, shoved his face into the pavement, and later put hobble restraints on his ankles.[194] On these facts, the Ninth Circuit reversed the grant of summary judgment to the officers on Blankenhorn's excessive force claim.[195]

A number of considerations influenced this outcome: the misdemeanor crime of trespass was not severe, and "Blankenhorn did not pose a serious threat to the officers' or others' safety."[196] Furthermore, the Ninth Circuit recognized that an individual "has the limited right to offer reasonable resistance to an arrest that is the product of an officer's personal frolic," a right triggered by "the officer's bad faith or provocative conduct."[197] If the officer's conduct is provocative and the individual uses reasonable force in resisting it, then a "constitutional violation [has] occurred."[198] As the *Blankenhorn* court explained:

> [T]he arresting officers gave no warning that they were going to arrest [Blankenhorn] before

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[194] *Id.*

[195] *Id.* at 477-81.

[196] *Id.* at 478.

[197] *Id.* at 479 (quoting *United States v. Span*, 970 F.2d 573, 580 (9th Cir. 1992)).

[198] *Id. See also Aranda v. City of Mcminnville*, 942 F.Supp.2d 1096, 1107 n.9 (D.Or. 2013) ("[A]n officer's provocative conduct may trigger a limited amount of reasonable resistance that cannot then be used to justify the application of greater force.").

> gang-tackling him and later applying hobble restraints. Indeed, as the video shows, [one officer] did not even attempt to handcuff Blankenhorn before he [and two others] – as if by predetermined signal – simultaneously took hold of and wrestled [Blankenhorn] to the ground. The lack of forewarning, the swiftness, and the violence with which the defendant officers threw themselves upon Blankenhorn could reasonably be considered "provocative," triggering Blankenhorn's limited right to reasonable resistance and thus making their later use of the hobble restraints unreasonable.[199]

Here, Bartlett was charged with the misdemeanor crime of disorderly conduct and resisting arrest. Bartlett perpetrated no act of violence before Weight shoved him,[200] and "a non-violent misdemeanor offense . . . will tend to justify force in far fewer circumstances than more serious offenses, such as violent felonies."[201] Viewing the facts in Bartlett's favor, Bartlett did not pose a threat to the safety of Weight, Nieves, or other onlookers,[202] and a reasonable jury could so conclude. This factor suggests that the use of force against Bartlett was excessive.

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[199] *Blankenhorn*, at 479-80.

[200] Ex. C [Tr. 78:6-80:17].

[201] *Young v. City of Los Angeles*, 655 F.3d 1156, 1165 (9th Cir. 2011) (citing *Bryan v. MacPherson*, 630 F.3d 805, 828-29 (9th Cir. 2010)).

[202] *See* discussion of facts *supra* Sections II.B-C.

To the extent that Bartlett did resist the assault from Weight and Nieves, a reasonable jury could find that their conduct was provocative because it came without warning,[203] and no attempt was made to handcuff Bartlett before taking him roughly to the ground. A jury could also conclude that Bartlett acted reasonably in reaction to the troopers' provocative conduct, thus rendering their violent reactions to his conduct excessive.

Less forceful means for deescalating the situation existed – such as attempting further communication with Bartlett, ordering him to leave, or taking a step back from him.[204] Troopers at Arctic Man have a policy of pairing up to ensure officer safety.[205] If anything, Weight should have felt safer once Nieves rushed to his side, not more fearful of Bartlett, but the enhanced video shows Weight shoving Bartlett after eying

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[203] Ex. B [Tr. 20:22-21:5] ("Right as soon as [the incident] happened, [Krack and I] were like, [Weight] didn't even give him a warning."); Ex. A [Tr. 53:15-16] ("[Weight] didn't give [Bartlett] time to respond to his get-back order."); *see also* Ex. O at 2 ("When practical, a verbal warning shall be given before using force, to communicate that force would be used if the officer's orders were not obeyed.").

[204] Ex. M [Tr. 63:17-24] (stepping back can avoid an escalation to use of force); Ex. O at 2-3 (listing "officer presence, verbal persuasions, directions, and commands" as compliance methods to use before force).

[205] Doc 47 at 3 & n.6; Ex. M [Tr. 60:13-18].

Nieves' arrival.[206] A reasonable jury could find that reasonable Alaskan officers in that situation would have attempted to communicate with Bartlett rather than shove him and concertedly take him to the ground.

In addition, whether Weight and Nieves handcuffed Bartlett too tightly, causing him injury, presents an issue of fact. Weight and Nieves have identical recollections of this issue: "I do not recall whether I assisted in handcuffing Mr. Bartlett. If I did, I would have used standard cuffing techniques."[207] Bartlett recalls that he was handcuffed, and that he later asked that the cuffs be loosened – the cuffs had cut off circulation to his hands, turning them purple.[208]

When viewed in Bartlett's favor, as the facts must be on summary judgment, a reasonable jury could find that Weight and Nieves used constitutionally unacceptable force under the circumstances.[209] The constitutional right not to be gang-tackled by police

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[206] Doc. 47-9 (enhanced video at 00:02-00:09); Ex. M [Tr. 63:10-15] (there is no explanation for why a trooper who had not yet used force would decide to once his partner arrives).

[207] *Compare* Doc. 47-8 at 6, *with* Doc. 44-2 at 4.

[208] Ex. C [Tr. 30:15-31:10]; *see also* Ex. A [Tr. 34:14-15] (Weight and Nieves cuffed Bartlett); Ex. B [Tr. 28:19-21] (same).

[209] *See Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (en banc) (noting that the Ninth Circuit has "held on many occasions that summary judgment . . . in excessive force cases should be granted sparingly" because an excessive force inquiry "nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom").

officers without warning was clearly established at the time Bartlett was arrested,[210] and a reasonable jury could find that the conduct of Weight and Nieves was not objectively reasonable under the circumstances and that neither could have reasonably believed their shove and concerted takedown of Bartlett was lawful.

D. Weight and Nieves Maliciously Procured Bartlett's Prosecution.

To prevail on a § 1983 malicious prosecution claim, Bartlett must present facts a reasonable jury could credit showing that "the initial proceeding (1) terminated in his favor, (2) was brought without probable cause, and (3) was initiated with malice."[211] The proceeding must also have been brought "for the purpose of denying [Bartlett] equal protection or another specific constitutional right."[212]

A malicious prosecution claim cannot be founded on the Due Process Clause of the Fourteenth Amendment because that amendment does not guarantee a substantive right "to be free from criminal prosecution

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[210] *See generally Blankenhorn v. City of Orange*, 485 F.3d 463 (9th Cir. 2007).

[211] *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988); *see also Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004) (analyzing state law elements of malicious prosecution for purposes of § 1983 claim).

[212] *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995); *Bretz v. Kelman*, 773 F.2d 1026, 1031 (9th Cir. 1985).

except upon probable cause."[213] But the Ninth Circuit has "not interpret[ed] *Albright* as establishing a rule that Fourth Amendment violations are the *only* proper grounds for malicious prosecution claims under § 1983,"[214] and accordingly such claims have been allowed to proceed on the theory that other constitutional rights were violated.[215]

Bartlett's malicious prosecution claim should be allowed to proceed based on two alternate theories. First, as Bartlett has already argued,[216] the Ninth Circuit has recognized a liberty interest under the Fourteenth Amendment to be free "from criminal charges premised on fabricated evidence," which is distinct from the liberty interest not to have proceedings brought in disregard to the defendant's guilt or innocence.[217]

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[213] *Albright v. Oliver*, 510 U.S. 266, 268 (1994) (plurality opinion suggesting that such claims be brought under the Fourth Amendment); *Id.* at 275-76 (Scalia, J., concurring); *Id.* at 276 (Ginsburg, J., concurring).

[214] *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1069 (9th Cir. 2004) (emphasis added); *cf. Birtton v. Maloney*, 196 F.3d 24, 28 (1st Cir. 1999) (refusing to resolve whether § 1983 malicious prosecution claims must be brought under the Fourth Amendment).

[215] *Awabdy*, 368 F.3d at 1069-70 (listing freedom of assembly, freedom of association, freedom of speech, the right to pursue an occupation, and equal protection (citing *Poppell v. City of San Diego*, 149 F.3d 951, 961 (9th Cir. 1998)).

[216] Doc. 49 at 4-7.

[217] *Mata-Gonzalez v. Monico*, 2013 WL 5476952, at *6-7 (D. Or. Sept. 27, 2013) (permitting § 1983 malicious prosecution claim to

Second, the Supreme Court has recognized that pretrial limitations on a defendant's liberty may amount to a seizure within the meaning of the Fourth Amendment.[218] This is so because a "defendant released pretrial . . . is scarcely at liberty; he remains apprehended, arrested in his movements, indeed 'seized' for trial, so long as he is bound to appear in court and answer the state's charges."[219] Because this court could determine as a matter of law that Bartlett's prosecution was brought in violation of his right to be free from unreasonable seizures or his right to be free from criminal charges based on false evidence, Bartlett malicious prosecution claim should survive summary judgment.

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proceed based on violation of this right) (citing *Devereaux v. Abbey*, 263 F.3d 1070, 1074-76 (9th Cir. 2001)).

[218] *Albright v. Oliver*, 510 U.S. 266, 278-80 (Ginsburg, J., concurring).

[219] *Albright*, 510 U.S. at 279; *id.* at 278 (stating defendant must "seek formal permission from the court (at significant expense) before exercising what would otherwise be his unquestioned right to travel outside the jurisdiction," and "[p]ending prosecution" defendant may "suffer reputational harm, and he will experience the financial and emotional strain of preparing a defense"); *see also* Doc. 47-16 (setting $500 bail, requiring court permission to leave state, requiring appearance in court, and prohibiting Bartlett from drinking alcohol and entering bars or liquor stores). Here, Bartlett expended in excess of $7,000 defending the charges against him. Ex. E.

1. Bartlett can rebut the presumption of prosecutorial independence.

Although a prosecutor's decision to initiate legal proceedings creates a presumption that the arresting officers were not the legal cause of the prosecution, this "presumption may be rebutted if [Bartlett] shows that the independence of the prosecutor's judgment has been comprised."[220] Bartlett may do this by presenting facts a reasonable jury could credit showing that the charging prosecutor either "was pressured by police or was given false information" or "relied on the police investigation and arrest when he filed the complaint instead of making an independent judgment on the existence of probable cause for the arrest."[221] The presumption of prosecutorial independence may also be rebutted if Weight and Nieves acted with "reckless disregard" for Bartlett's rights or they "engaged in wrongful or bad faith conduct that was actively instrumental in causing the initiation of legal proceedings."[222]

The Ninth Circuit has held that the presumption was rebutted when a prosecutor "based the decision to prosecute solely on the information contained in the officers' reports, but the plaintiffs highlighted striking

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[220] *Beck v. City of Upland*, 527 F.3d 853, 862 (9th Cir. 2008).

[221] *Id.* (citing and quoting *Smiddy v. Varney*, 665 F.2d 261, 266-67 (9th Cir. 1981)).

[222] *Id.* at 862-63 (quoting *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1067 (9th Cir. 2004)).

omissions in those reports as well as the fact that the officers themselves offered conflicting stories."[223]

Here, as Bartlett has already argued, Beard accepted the case for prosecution based solely on "the charging documents and submitted evidence."[224] From his reading of the criminal complaint, supporting affidavits, and police reports,[225] Beard believed that Nieves had told Bartlett he was under arrest – and Beard generally accepted the reports as true – but Beard later admitted the video did not show Bartlett being told he was under arrest, did not show Bartlett slurring his speech, and did not show Bartlett head-butting anyone.[226] Beard also later admitted the video did not show Bartlett "fighting" with either trooper.[227] Beard conducted no independent investigation before deciding to prosecute Bartlett but instead relied solely

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[223] *Newman v. Cnty of Orange*, 457 F.3d 991, 994 (9th Cir. 2006) (citing *Borunda v. Richmond*, 885 F.2d 1384, 1390 (9th Cir. 1998)); *see also id.* (noting that presumption is rebutted when "prosecutor relied solely on the arresting officers' reports, which omitted critical information," plaintiff's version of events is corroborated, and "officers' accounts conflicted" (citing *Barlow v. Ground*, 943 F.2d 1132, 1137 (9th Cir. 1991)).

[224] Doc. 49 at 6 (citing Doc. 44-10 at 3); *see also* Ex. S [Tr. 16:8-16; 49:21-55:10].

[225] Ex. S [Tr. 16:8-16].

[226] Ex. S [Tr. 59:5-15; 60:5-61:7; 133:9-134:8 (arrest); 33:17-24 (truth of reports) 103:1-104:11 (slurring his speech); 128:1-129:15 (head-butt)].

[227] Ex. S [Tr. 139:13-140:18].

on the misinformation submitted to him by Weight and Nieves.[228]

The reports on which Beard relied grossly mischaracterized the altercation with Bartlett, as both the video and the deposition testimony of Walker, Krack, Thain, Bartlett, and Sadler demonstrate.[229] When viewed in Bartlett's favor, as the facts must be on a motion for summary judgment, Bartlett did not shout at the RV occupants not to speak with Nieves; did not charge up to Weight and Walker or position himself in between Weight and Walker; did not come at Weight after being shoved or attempt to head-butt or punch either trooper; and Bartlett was not highly intoxicated.[230] Bartlett has presented "ample evidence from which a reasonable jury could conclude that the arresting officers, through false statements and material omissions in their reports, prevented the prosecutor from exercising independent judgment."[231]

2. Bartlett can satisfy the state law elements of malicious prosecution.

The first element of a malicious prosecution claim is that the proceeding terminated in favor of the

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[228] Ex. S [Tr. 173:12-176:12].

[229] *See* discussion, *supra* Section II.

[230] *See* discussion, *supra* Section II;

[231] *Barlow v. Ground*, 943 F.2d 1132, 1137 (9th Cir. 1991).

accused.[232] Here, the State alleges that the disorderly conduct and resisting arrest charges against Bartlett were dropped due to "budget issues" because it would have cost too much for ADA Beard to travel from one end of the Glenn highway to the other.[233] Bartlett posits another reason why the charges against him were dropped: once Beard saw the video, he emailed Nieves and exclaimed: "I don't like the editing of [the video]. I would like to get the original footage."[234] The inference that Beard dropped the case because the video did not corroborate the reports of Weight and Nieves is one that a reasonable jury could justifiably make.

Initiation of the proceeding with malice, the tort's third element,[235] can be inferred from the actions of Weight and Nieves.[236] In addition to the police report statements, which are flatly repudiated by the video,[237] Weight told Beard that he had asked Walker and Krack if they knew Bartlett, but that both had denied

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[232] *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988). Bartlett has already argued that the second element, lack of probable cause, *id.*, has been met. *See* discussion *supra* at Section III.A.

[233] Doc.47 at 43 (citing Doc. 44-10)

[234] Ex. R at 11.

[235] *Kollodge*, 757 P.2d at 1026.

[236] *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264, 1266 (Alaska 1992) ("Malice may be inferred if the acts exhibit 'a callous disregard for the rights of others.' (quoting *Alyeska Pipeline Serv. Co. v. O'Kelley*, 645 P.2d 767, 774 (Alaska 1982)).

[237] *See* discussion, *supra* at Section II.

knowing him.[238] Walker and Krack each deny that any such conversation with Weight occurred. A reasonable jury could draw the inference that Weight was attempting to portray Bartlett as a stranger with no rational reason for interjecting himself into a conversation between a juvenile and a trooper.

For his part Nieves noted in his police report that when he first encountered Bartlett, Bartlett was loudly telling people near the RV not to speak with Nieves, but everyone at the RV agrees that Bartlett did no such thing.[239] And Nieves, who was wearing a wireless microphone the whole time, responded that there was no audio of the arrest when questioned by his superior.[240] A reasonable jury could infer that Nieves deliberately withheld his knowledge of the video footage because it directly contradicted his version of the altercation. The inference could also be made that Weight and Nieves believed Bartlett had challenged their authority in front of onlookers and a rolling video camera, a challenge that unreasonably angered both men, causing them to behave provocatively toward Bartlett and then file a demonstrably false criminal complaint in further retaliation against Bartlett.[241]

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[238] *See* discussion, *supra* at Section II.G.

[239] *See* discussion, *supra* at Section II.A.

[240] *See* discussion, *supra* at Section II.F.

[241] After Bartlett's arrest, Nieves told Bartlett: "'[B]et you wish you would have talked to me now." Ex. C [Tr. 99:8-23].

3. Reasonable Alaskan officers know that it is unlawful to draft false police reports.

Assuming Bartlett has presented facts showing that Weight and Nieves violated his constitutional right to be free from criminal charges premised on false evidence, then Weight and Nieves would not be entitled to qualified immunity if "it would be clear to a reasonable officer that [their] conduct was unlawful in the situation [they] confronted."[242]

When deposed and asked whether he knew "that it was against the law to lie in an effort to convict somebody on charges they did not commit," Nieves replied, "We're just not supposed to lie about anything in this job. You get terminated for lying."[243] When deposed and asked how accurate he thought his police report was compared to the video, Weight admitted that the video did not corroborate his report but rather reflected his subjective perceptions and fears.[244] Nieves also testified that he did not worry whether audio of the event existed because "we had multiple Troopers present that all saw the same thing and all testified to it."[245] Nieves asserted "two troopers" were "more than enough" to "present[] everything that we needed to hold [Bartlett] accountable for his criminal activity that day" and that audio was not necessary because "we are set apart, we're set apart because we're known to be

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[242] *Garcia v. Cnty of Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011).

[243] Ex. D [Tr. 23:9-24:4].

[244] Ex. K [Tr. 54:10-60:7].

[245] Ex. D [Tr. 44:24-25].

honest, we hold people accountable for criminal activity and that's what we do. . . . We have a solid reputation."[246] Viewed in Bartlett's favor, these facts could allow a reasonable jury to infer that a reasonable officer would have known it was unlawful to draft a false police report in order to charge someone with a crime.[247]

E. Punitive Damages are Appropriate.

"It is well established that a 'jury may award punitive damages under section 1983 either when a defendant's conduct was driven by evil motive or intent, or when it involved a reckless or callous indifference to the constitutional rights of others.'"[248] "[M]alicious, wanton, or oppressive acts or omissions are . . . all proper predicates for punitive damages under § 1983."[249] Bartlett has put forth evidence from

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[246] Ex. D [Tr. 41:12-46:13].

[247] *See Devereaux v. Abbey*, 263 F.3d 1070, 1074-76 (9th Cir. 2001).

[248] *Morgan v. Woessner*, 997 F.2d 1244 (9th Cir. 1992) (quoting *Davis v. Mason County*, 927 F.2d 1473, 1485 (9th Cir.1991)).

[249] *Dang v. Cross*, 422 F.3d 800, 807 (9th Cir. 2005) (citing *Smith v. Wade*, 461 US 30, 45 n.12, 46 n.13, 54 (1983)); *see also id.* at 810 ("Awarding punitive damages for oppressive conduct that was the cause of the plaintiff's injury deters and punishes the defendant for conduct that is not necessarily encompassed by malicious or reckless conduct. When a jury is instructed that it may award punitive damages for oppressive acts, the jury must consider the relative positions of power and authority between the parties and determine whether the defendant misused his power or authority or abused the plaintiff's weakness in the course of the wrongful conduct.").

which a reasonable jury could conclude that Weight and Nieves acted either maliciously, recklessly, or oppressively when they assaulted Bartlett based on his speech, falsely arrested him, and then fabricated false evidence to procure his prosecution. It would be premature at this juncture to hold as a matter of law that Bartlett is not entitled to any punitive damages: "credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge."[250]

F. Weight and Nieves Violated Bartlett's Right to Due Process.[251]

Although the Due Process clause of the Fourteenth Amendment does not impose upon police "an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution," due process is violated when police in bad faith fail to "preserve potentially useful evidence."[252] This duty applies to "cases in which the police themselves, by their conduct, indicate that the evidence could form a

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[250] *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011) (quoting *Nelson v. City of Davis*, 571 F.3d 924, 927 (9th Cir.2009)).

[251] Bartlett does, however, agree with the State that he cannot assert a § 1985 conspiracy claim because he is not a member of a protected class. Doc 47 at 44-45; *Bretz v. Kelman*, 773 F.2d 1026 (9th Cir. 1985).

[252] *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).

basis for exonerating the defendant."[253] Imposing this duty guards against situations where "potentially exculpatory evidence is permanently lost, [and] courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed."[254]

The Ninth Circuit has expanded the rule announced in *Youngblood* to situations where police in bad faith fail "to *gather* potentially exculpatory evidence."[255] In that habeas corpus case Miller challenged his assault charge, arguing in part that "he was denied due process because the investigating officer failed both to collect the victim's bloodstained jacket and to photograph [Miller's] scratched arms."[256] The Ninth Circuit observed that "failure to preserve evidence that is only potentially useful does not violate due process in the absence of bad faith on the part of the police."[257] But the court also concluded Miller had sufficiently established bad faith because the officer had referred to Miller "by using an extremely derogative expletive," the officer knew of the bloodstained jacket's existence

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[253] *Id.*

[254] *Id.* at 57-58 (quoting *California v. Trombetta*, 467 U.S. 479, 486 (1984)).

[255] *Miller v. Vasquez*, 868 F.2d 1116, 1120 (9th Cir. 1989) (emphasis added).

[256] *Id.* at 1117, 1119.

[257] *Id.*

yet "did not collect it," and the officer had attempted to dissuade witnesses from testifying at Miller's trial.[258]

"The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed."[259] The video in this case is extremely important because it originally included an hour of raw footage shot over the course of 4 to 5 hours by Thain, who stayed within 30 or 40 yards of Nieves during the night in question.[260] This hour of raw footage no longer exists, however, because after it was edited, it was erased within six months in accordance with the TV station's policy.[261] Had Nieves or Weight gathered a copy of the video, or even noted its existence in their police report, the raw footage could have been available for analysis.

From the facts Bartlett has presented,[262] reasonable jurors could find that Weight and Nieves failed to gather the video evidence because they knew it

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[258] *Id.* at 1120-21 ("Taken as a whole, these allegations and evidence raise a colorable bad faith claim."); *see generally Moldowan v. City of Warren*, 570 F.3d 698, 730-35 (6th Cir. 2009) (analyzing *Brady* claim in the context of § 1983 at length and ruling that such a claim, even if subject to the *Youngblood* bad faith requirement, survived summary judgment).

[259] *Youngblood*, 488 U.S. at 456 n.*.

[260] Ex. J [Tr. 26:9-27:17].

[261] Ex. J [Tr. 13:18-14:12].

[262] *See generally* discussion, *supra*, Section II.

contradicted their version of events, from which reasonable jurors could further infer that Weight and Nieves acted in bad faith. The video does not show Bartlett loudly telling the occupants of the RV not to speak with Nieves, which contradicts the police report. The video does not show Bartlett inserting himself between Weight and Walker, which contradicts Weight's affidavit in support of the criminal complaint. The video shows that Weight stepped forward to shove Bartlett, not that Bartlett came at Weight. The video, unlike the police reports and complaint, does not portray Bartlett fighting, throwing punches, head-butting, or being told he is under arrest. The video also captures Bartlett's clear and unimpeded speech, which contradicts both troopers' assertions that Bartlett was highly intoxicated. What is more, although Nieves was wearing a wireless mic and knew Thain had been filming him during the night in question, Nieves did not mention this film in either his use of force report or in his police report.

But Nieves admitted that as a police officer he is expected to "gather[] all the evidence that's available," including "observations and testimony of fellow . . . officers on scene [and] witness statements."[263] Nieves also understood that as a police officer he could request copies of videos shot by someone at the scene of a crime.[264] But when deposed Nieves also asserted that he could not have obtained a copy of the Thain video because it was "not my property" and he had no idea

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[263] Ex. D [Tr. 16:24-17:4; 17:23-18:11].

[264] Ex. D [Tr. 20:2-24].

whether Thain had been filming Bartlett's arrest.[265] In Nieves own words, securing a copy of the video from Thain was unnecessary because "I didn't need anything from [Thain] at the time because I already had testimony from my Troopers that were on scene and my observations of a crime that was committed."[266] But as Bartlett has demonstrated time and time again, the observations of Weight and Nieves concerning Bartlett's behavior on the night in question are patently false and do not hold up against the undisputed video evidence.

A police officer violates the Constitution when, in bad faith, he fails to collect potentially useful evidence. Reasonable jurors could infer that Nieves and Weight made no effort to obtain Thain's video because they knew it would directly refute their version of events, which amounts to bad faith. And reasonable jurors could also find that no reasonable Alaskan police officer would have failed to obtain a copy of evidence as essential and probative as Thain's video.[267]

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[265] *Compare* Ex. D [Tr. 38:17-41:20], *with* Ex. R at 11 ("The reporter in this case was also the camera man. He was standing next to or near me throughout my entire contact at this camp site.").

[266] Ex. D [Tr. 41:16-20]. Weight, although he recognized the video could be an important piece of evidence, similarly forgot to note its existence in his police report. Ex. K [Tr. 61:4-63:17].

[267] *See* Ex. Q [Tr. 42:1-46:17] (a competent Alaskan police officer would at least note in the police report the existence of a probative video taken at the scene of a crime).

IV. CONCLUSION

Weight and Nieves arrested Bartlett without probable cause, and a jury should resolve the reasonableness of their subjective perceptions and beliefs that Bartlett posed a threat. Weight and Nieves used concerted, unforewarned, and excessive force against Bartlett in retaliation for his mere verbal challenges to their authority when no reasonable Alaskan trooper would have done so. And although they knew it was unlawful, Weight and Nieves then drew up a false and embellished police report and criminal complaint to ensure Bartlett's prosecution. When "an otherwise competent officer . . . make[s] an unreasonable decision or make[s] an unreasonable mistake as to law or fact," that officer should face liability under § 1983.[268] Because a reasonable jury applying an objective standard could conclude that Weight and Nieves were "plainly incompetent" or "knowingly violate[d] the law,"[269] Bartlett respectfully submits that his § 1983 claims should survive summary judgment.

DATED this 15th day of March 2016.

/s/ Zane D. Wilson
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Fairbanks, Ak 99701
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[268] *Rosenbaum*, 663 F.3d 1071, 1078 (9th Cir. 2011) (citing *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011)).

[269] *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

Email: zane@alaskalaw.com
Attorney Bar #9111108

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA AT FAIRBANKS

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

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Q: Deposition of Michael Ingram

R: Correspondence between CSG, Inc. and State of Alaska

S: Deposition of Raymond Beard

DATED this 15th day of March 2016.

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* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF DAVID KRACK
July 27, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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* * * *

* * *

[p.5]

couple weeks ago. I don't know if you remember that?

A Yes.

Q Have you spoken with Mr. Wilson on the phone?

A No.

Q In person?

A Like since then?

Q Yes.

A No.

Q No. Before that time, have you spoke with Mr. Wilson? That would be Mr. Bartlett's lawyer.

A No. Well, but I called once in October.

Q Okay. And what was that about?

A To see when Russell's court date was going to be.

Q Okay. And that would be the criminal court date?

A Yeah.

Q How did you meet Russell Bartlett?

A He's friends of some friends that I go snowmachining, four-wheeling, and camping with.

Q And who are those friends?

A Rob Carlson, Natalie Chamber – Chamberlain, Kyle Chamberlain. There's probably like 10, 12 of them.

Q So you have -- you -- would -- is it you and Mr. Bartlett kind of have mutual friends .....

A Yeah.

Q ..... that you met through?

* * *

[p.13]

Q Calm?

A Calm.

Q Do you recall whether he asked – did he ask either you or McCoy – did the trooper ask either you or McCoy whether you knew Russ Bartlett?

A No, I don't believe he did.

Q Okay. How did you know about the party that was going on at the Sadler place?

A You could hear it from anywhere on earth, man.

Q Because it was – it was like really loud?

A Yeah.

Q It was kind of the big party of the .....

A It was biggest one I've ever seen there.

Q Have you been to other Arctic Man?

A Six or seven, I think, so, yeah.

Q So in terms of biggest, what do you mean? The number of people, type of music, or .....

A The music and the way it was set up.

Q And how was it set up?

A They had a full DJ booth in the back of a trailer.

Q Did you drive by and see it going on or .....

A No.

Q ..... and you planned to go later or how .....

A You could hear it from where we were camping.

Q So you just said, let's go to the party?

* * *

[p.34]

Q Maybe his right? And so where -- how close did the -- his hand get to the trooper's face?

A A foot or so, maybe.

Q Maybe .....

A They were close, because you had to be close to talk to people. It was like really loud.

Q Sure. But could it have been closer than a foot, his ri -- his hand closer than a foot to the trooper's face?

A I don't think he was that close.

Q Okay. And then what happened when the trooper went to -- or what happened after Bart -- Mr. Bartlett was pushed away?

A He tried to stand up and two officers put him to the ground and handcuffed him.

Q Okay. So the -- and the trooper that was speaking with McCoy, that's the same trooper that came back and .....

A That I spoke to, yes.

Q Right, right. And that you described as calm?

A At that time, he was.

Q Yeah. And that -- I asked you this question, I think, when we spoke on the phone, so I'm going to ask you again. And I -- do you think that looking back on when Mr. Bartlett approached the trooper who was speaking with McCoy, that it's reasonable that a police officer

* * *

[p.50]

and answered.

A He was already over there.

Q He was already over there? So it's your inference then, is that Mr. Bartlett walked over there to speak with the trooper?

A Correct.

Q Okay. You don't have any idea why Mr. Bartlett walked where he walked?

A No clue.

Q It's entirely possible, based on what you saw, that Mr. Bartlett walked in this vicinity, and then the trooper came up to him. Is that correct?

A Possible.

Q You say that you're then having -- doing your party thing or whatever, and you notice, at some point, that McCoy Walker is in contact with the trooper, correct?

A Correct.

Q And then you say that you and Mr. Bartlett proceed to walk over there?

A Yes.

Q Is there anything about the way that you were walking that could make anybody perceive that you were some sort of a threat to folks?

MS. MOORE: Objection; form.

A No.

[p.51]

Q Was there anything about the way that Mr. Bartlett was walking that could be perceived as a threat?

MS. MOORE: Same objection.

A No.

Q Would there be any other description for describing how both you and Mr. Bartlett were walking, other than normal?

A Yeah, did normal pace.

Q Now, how long passed between the time that Mr. Bartlett gets to Trooper Weight and McCoy and the time that Trooper Weight shoves Mr. Bartlett?

A Had to have been less than a minute.

Q Less than a – could it have been a matter of seconds?

A Yeah. It was quick.

Q It was quick. Now, you said you heard Trooper Weight say something like, get back, and then he shoved Mr. Bartlett. Is that correct?

A Correct.

Q Were those two events pretty much simultaneous events or was there some spread between those events?

A There were – that was my one problem with this, is how quick he did it.

Q How troo – quick he did it, meaning Trooper Weight?

A Yeah, how quick the trooper pushed him.

Q So at the time that Trooper Weight pushes Russ

* * *

[p.53]

MS. MOORE: Objection; foundation.

A Yeah.

Q Did you observe Mr. Bartlett as he was speaking to the trooper?

A Yes.

Q And did you observe Mr. Bartlett's hands as he was speaking to the trooper?

A Yes.

Q Did Mr. Bartlett's hands do anything that trooper could have perceived as a threat to him with his hands?

MS. MOORE: Objection; foundation.

A Not that I saw.

Q At the time the trooper shoved Mr. Bartlett, did you perceive any reason for that action?

A No, because he -- he didn't give him time to respond to his get-back order.

Q Was Mr. Bartlett any closer to Trooper Weight than Trooper Weight was to Mr. [sic] McCoy?

A No.

Q Did Mr. Bartlett ever take any action to try to get in between Trooper Weight and Mr. [sic] McCoy?

A No.

Q Did Mr. Bartlett get any closer to Trooper Weight than anybody else was getting to people to talk to them there at the party?

[p.54]

A No.

Q After the trooper shoved Mr. Bartlett, did Mr. Bartlett try to come back at the trooper?

A He tried to stand up.

Q At any point, did you see Mr. Bartlett try to head butt one of the troopers?

A No.

Q Did you see Mr. Bartlett try to punch one of the troopers?

A No.

Q I mean, in your -- how far away are these events taking from you, Mr. Krack? I mean, how far away are you when they -- when these troopers jumped on Mr. Bartlett?

A 10 feet, maybe.

Q Anything impeding your vision?

A No.

Q Did you ever see Mister -- whether it was a punch or not, ever see Mr. Bartlett, quotes/unquote, swing his right fist towards one of the troopers?

A Not that I can recall. Maybe as he was falling, his arm fell back.

Q Did Mr. Bartlett's arm do any action, other than just trying to stop himself from face planting in the ground?

A No.

[p.55]

Q You say you were in shock regarding -- you were and Mr. [sic] McCoy were in shock regarding what had just happened. Do you remember making that statement?

A Yeah.

Q What were you in shock about?

A How quick it happened and we didn't really know what happened.

Q So you just observed it yourself and you're sitting there going, why did they do this?

A Yeah.

MS. MOORE: Objection; form of the question.

Q Is that an accurate statement?

A Yes.

Q And when you're going, why did they do this, who are you referring to there?

A The troopers.

Q Did you ever do it -- did you see Mr. Bartlett do anything that you would perceive as him trying to fight with the troopers?

A No.

Q Was there ever any point where Mr. Russ -- Mr. Bartlett's chest was, quotes, almost touching Trooper Weight's chest?

A He wasn't that close.

Q And you say you're -- describe for me, again, what

[p.56]

the -- your ability to recall these events. I mean, do you think you have a good recollection, a poor recollection? How would you .....

A It's fair. I mean, it has been a year-and-a-half since the incident happened.

Q How about at the time you were there, had you consumed so much alcohol that you believe it would impair your ability to recall these events?

A No.

Q Do you believe Mr. Bartlett was so intoxicated in some manner, it would impair his ability to recall the events?

MS. MOORE: Objection; foundation, form.

A No.

Q And immediately prior to this event with the trooper, you'd been interacting with Mr. Bartlett, correct?

A Yes.

Q Talking, walking?

A Yep.

Q Dancing?

A Correct.

Q As you talked to Mr. Bartlett, did you perceive that he was intoxicated in some manner?

A You could tell he'd been drinking, but he wasn't drunk.

Q Was he able to speak clearly?

[p.57]

A Yes.

Q Did he have slurred speech?

A No.

Q Was Mr. Bartlett stumbling around when he danced?

A At dancing?

Q Just – was he just – as far as you could tell, was he dancing just ordinary way he would otherwise dance?

A Yeah.

Q Okay. Did you ever observe Mr. Bartlett do anything that you felt was a refusal to comply with the commands that were being shouted to him by the troopers?

MS. MOORE: Objection; foundation, form.

A No.

Q Did you see this coming in any way?

MS. MOORE: Objection; form .....

A No.

MS. MOORE: ..... foundation.

Q How long did it take from the time the troopers jump on Mr. Bartlett and arrest him – handcuffed him, arrest him, how long did it take you to kind of digest what had just taken place?

A Probably about five, ten minutes or some – so, just .....

MR. WILSON: Go off the record just for a second.

COURT REPORTER: We're off record. Time is 4:10.

[p.58]

(Off record)

(On record)

COURT REPORTER: We're on record. Time is 4:11.

Q Did you observe Mr. Bartlett do anything that would you perceive as, quotes/unquotes, hostile towards the trooper?

MS. MOORE: Objection; form, foundation.

A No.

Q Did you observe Mr. Bartlett do anything that you perceived as, quotes, aggressive, unquotes, toward the trooper?

MS. MOORE: Same objection.

A The only thing I could see is him being that close, but .....

Q Which, within the context of the noise, was the normal engagement manner .....

MS. MOORE: Objection; form.

Q ..... is that correct?

A Correct.

MR. WILSON: That's all the questions I have Thank you, Mr. Krack.

DAVID KRACK

testified as follows on:

REDIRECT EXAMINATION

BY MS. MOORE:

* * *

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF MACCOY WALKER
September 1, 2015

APPEARANCES:

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* * * *

* * *

[p.5]

Q Okay. Mr. Walker, what's your occupation?

A I go to school.

Q Where do you go to school at?

A North Pole High School.

Q And what grade are you in?

A I'm in eleventh grade.

Q And what is your age?

A 17.

Q And do you know a gentleman by the name of Russell Bartlett?

A Yes, sir.

Q And how long have you known Mr. Bartlett?

A Well, now, for probably about three years.

Q And, I guess, how would you characterize your relationship with Mr. Bartlett? Is he a friend of yours, an acquaintance, what is he?

A Well, since that Arctic Man week, we became pretty -- pretty good friends.

Q Okay. And so how -- did you attend the 2014 Arctic Man?

A I did.

Q And how did you get there?

A I rode down there with my cousin, Ashley and David.

Q David Krack?

A Yep, David Krack.

* * *

[p.8]

that basically consumed the rest our day after riding snowmachine. We got back to our camp. They were having a little fire. We're all having a fire. Everybody went to bed besides for David, Russ, and I. And the lights over there at the party were just lighting up the entire place, so we decided to walk over there and that's when everything happened.

Q Okay. Let me back up before that point. You were -- before you went to the party, you were there at the campsite with Mr. Krack and with Mr. Bartlett, is that correct?

A Yeah.

Q Okay. Did you notice anything about them in terms of what they were up to before they went to the party? Had they been consuming any alcohol?

A Not that I recall. Not much, at least. I know David had a beer in his hand walking over there.

Q Okay.

A And Russ had a backpack with some alcohol in it.

Q Did you -- before you got to the party, I mean, was anybody, from your perspective, visibly intoxicated like .....

A Unh-huh.

Q Okay. Did anybody have slurred speech?

A No, sir.

[p.9]

Q Stumbling? Any difficulty controlling their percep .....

A No.

Q ..... their faculties?

A Unh-huh.

Q Okay. And so how did you get to the Sadler party, to your recollection?

A We walked.

Q Is it possible you rode in a trailer that somebody else was pulling around with folks in some kind of an RV?

A Yeah. I actually take that last one back. We rode over there. We got a ride over. We got dropped off there and we were hanging out, and then we walked back.

Q Okay. And who dropped you off, if you recall?

A Alan Crow.

Q Okay. And what did he drop you off in?

A It was a side-by-side pulling the snowmachine trailer.

Q And so who went to the party with you?

A David and Russ.

Q And do you have any recollection of about what time it was when you arrived at the party?

A No.

Q Okay. And don't feel obligated to -- you know, if you don't know something, that's fine. We just ask questions and if you don't know, then we just move on.

* * *

[p.11]

Q And what was he yelling?

A He was just -- I'm not sure about that. You just .....

Q Okay.

A ..... heard yelling and then it was like a swarm of troopers came over to the door, and then they just shut the door on everybody. Just, you know .....

Q Did the troopers ever go into the camper?

A No.

Q When the troopers were at the door and you see them talking or interacting with the folks there, do you know where Mr. Bartlett was?

A Not that I recall, no.

Q Okay. In the course of you -- whenever you're observing the trooper there at the door, did you hear Mr. Bartlett holler anything at anyone?

A No.

Q If Mr. Bartlett had been close enough to holler at the trooper, would you have been able to hear it?

MS. MOORE: Objection; foundation.

Q She makes objections; you just go ahead and answer, okay?

MS. MOORE: Form.

A Yeah, I could have heard it, because I could hear the troopers yelling. So if Rusty was going to yell, I'm sure I could hear it -- I could have heard it.

* * *

[p.14]

see any other interaction between the trooper and Mr. Bartlett prior to the time that Mr. Bartlett comes up to you and you're speaking with one of the troopers?

A No.

Q Okay. Were you, at least at times, hanging out with Mr. Bartlett at the party?

A Yeah. I know we got separated at a time that the RV incident happened with the other dude, and I was just standing next to David at that time. And then the trooper started talking to me pretty short after that.

Q Okay. How -- what's your best estimate of time between the RV -- what you observed at the RV at that time?

A Probably five or ten minutes.

Q Okay. So tell me what happened. You're standing in the crowd and what happened as far as this trooper goes?

A Well, me and David are standing there. We're kind of on the outskirts of the whole group of people around the DJ. And this really tall trooper -- I'm not sure which one it was; it was a taller guy -- come up to me and tapped me on my shoulder. And I turned around and he said, go ahead and come with me real quick. So, yes, sir, you know, whatever. Turned around and walked with him, and David was walking with me, because he was the guy I was there with.

[p.15]

He walked over and we got far enough back so we could actually talk. And the trooper said that he smelled alcohol on my breath. And I was like, no, sir, you know, I haven't even had a sip to drink today. Just got back from snowmachining and we were just -- you know, ate dinner and came over here. He was like, well, could you pass a Breathalyzer? I was like, yeah. And he was like,

okay. Well, I'm going to have to go back to my car real quick and get the Breathalyzer.

And so me and David were just standing there, and he walks back to his car. And it was quite awhile, probably five minutes at least, until the trooper came back to us. He got sidetracked or what not, helped out another trooper. And then he came over and he was actually -- when he got back, he was rude. He hooked up the straw, and then Russ came over and said, what's going on here? You know, and you don't have any right to do this with -- you don't have any off -- you don't have any -- you don't have the right to do this to him, officer. His parents aren't here. He -- you don't have permission to do it, you know.

And then Russ kind of did get up close, but it was at a party, and Russ is just a loud guy, so it might have sounded like he was yelling at the trooper, but really, I don't think he was. And the trooper shoved

[p.16]

him at his chest, just shoved him back, and Russ like stumbled back, and then he got up. He was like, what was that for? What was that for?

And then that's when the trooper tackled him. And I don't even know where the other troopers came out of, but they just started wrestling Russ right in front of us, and then ended up getting him -- his hands behind his back. And Russ is yelling, like, what did I do? What did I do? I want to talk to the sergeant. I want to talk to the sergeant. So they go and throw him in the back of the car and then

the cop comes back over to me and I pa -- I give the Breathalyzer. And he says, thanks; sorry you had to witness that. And then he just said, go ahead and get home now.

Q Okay. When the -- I'll go back through some of that. Let me take care of one of these things before I do that. Whenever they came back to you, did they ask you whether or not you knew Mr. Bartlett?

A No.

Q If -- had they -- had -- let's assume for a minute, that they had asked you whether you knew Mr. Bartlett, what would you have said?

A I would have said, yeah, because I did know him.

Q Okay. Let's go back -- let me show -- I want to show you a video. I mean, we'll work through some things

* * *

[p.19]

A Probably three feet, maybe, because me -- I was trying to communicate with the troop -- or, yeah, the -- with the trooper, and then he just kind of came up.

Q Okay. Can you describe Mr. Bartlett as he comes up? I mean, was he -- did he seem threatening to you in any way or .....

A No. He seemed curious, of course, because I was the guy that walked over there to the party with him with David and, you know, so I could understand where he was coming from, being curious and wondering what the heck the trooper was doing.

Q Okay. Did -- would you -- I mean, allegedly, Mr. Bartlett was angry. Did you see anything that indicated Mr. Bartlett was angry?

A No.

MS. MOORE: Object to the form of the question.

Q Okay. As Mr. Bartlett approached you, was there anything about your demeanor that you felt anyone could perceive as threatening?

A Well, Russ's?

Q Yeah.

A No.

Q Okay.

A Well, besides for his loud voice, but I -- that's not really threatening.

[p.20]

Q All right. As you're in the -- well, how long is this conversation that -- between Mr. Bartlett and the trooper before the trooper shoves Mr. Bartlett?

A It was really quick. The troo -- Russ asked if he has any right to do this without my parent or guardian or whatever. And that's when -- I don't remember Russ getting any closer than what he is right there. And that's when the trooper said that he was in his face, because he did say, you're in my face; get back, get back. And then shoved him.

Q And this is before you -- you say he said that before he shoved Mr. Bartlett?

A If I remember correctly, yes.

Q Okay. Let's play this here for a second. See -- can -- I mean, can -- do you think -- would it have been -- I mean, this is the first time the camera arrives. Do you know if that would have happened before or after this camera shot here?

MS. MOORE: Objection; form of the question, foundation.

A I don't -- I don't know.

Q Okay. Well, let's play it for you. Let me back up just a tid. See, we're at 2:04. I don't know where that's at here.

(Video played)

[p.21]

A Okay. So he said it right after he shoved him, basically. So he had no -- no time to process it, and that's what me and David were talking about. Right as soon as this happened, we were like, he didn't even give him a warning.

Q Okay. Now, did you see Mr. Bartlett do anything that your perception was, it prompted the trooper to shove him; I mean, that caused that to occur?

A No.

Q Was Mister -- I mean, looking at that picture there, was Mr. Bartlett any closer to the trooper than you were?

A No, not at all.

Q In fact, you were probably closer, is that .....

A I was probably closer, because the trooper is a tall guy. He had to like kind of crouch down to get face-to-face with me, you know.

Q And do you feel that your contact there, the little group of you, were you closer than you would otherwise be, but for the noise, or do you think the noise had any impact on how close everybody was at that point?

A Yeah, the noise .....

MS. MOORE: Form.

A The noise definitely affected how close we were, because we had to be close in order to hear. I mean,

[p.22]

the music was pretty loud, but we could definitely hear once we were in tight close like that. Even without Russ being there, me or David and the trooper and I, we were all still tight.

Q Okay. You've worked through -- do you remember any other conversation other -- before the shove, other than what you've already related to us?

A No.

Q Did Mr. Bartlett ever get -- come -- like -- you said that was the -- what we saw there, what two-some -- odd that was as close as Mr. Bartlett ever got?

A Yeah, that I remember.

Q Okay. Did Mr. Bartlett ever get as close what you would call like chest-to-chest; chest almost bumping the .....

A No, because he would .....

Q ..... trooper?

A ..... have had to move me out of the way.

Q Did you ever see, at any point in the conversation, where Mr. Bartlett had an angry look on his face?

A No.

Q Was there ever any point in the conversation where Mr. Bartlett tried to get between you and the trooper?

A No.

Q Did Mr. Bartlett ever try to put his arm or, you know,

[p.23]

go like this, and try to get in between you and the trooper?

A No.

Q Did Mr. Bartlett do anything that you would have perceived or you think anybody could have reasonably perceived as being hostile?

A No.

MS. MOORE: Objection; form.

A Not at all. Besides for -- when he was going to get taken down by the two troopers, he didn't just lay

like – he was really wondering what happened, and I could see how that might be, you know, that the troopers would have to put some force into it, but other than that, absolutely not.

Q As you remember seeing it, when the trooper went to shove Mr. Bartlett, did the trooper have to get closer to Mr. Bartlett to shove him?

A Yeah. I remem – I think he took a step and then shoved him.

Q Any point in this conversation between Mr. Bartlett and Trooper Weight where Mr. Bartlett was slurring his speech?

A No, not – really, not that I remember.

Q Did you see Mr. Bartlett do anything that you perceived as combative? And before the shove, okay? I'm talking

[p.24]

about before the shove, at this point.

A No, not until the trooper shoved him.

Q When the trooper shoved Mr. Bartlett, I gu – did you see that coming at all?

A Not at all. And I – I think that's why he got kind of – you know, was yelling and stuff, because it came out of nowhere, really. He didn't say, if you don't step back, I'm going to arrest you, or anything.

Q Was there ever any point in time where Mr. Bartlett – the trooper was trying to say something

and Mr. Bartlett is like talking over him and not letting him say anything?

A No, not that I remember.

Q In your ability to observe these events -- I mean, you're -- this group of you folks is well -- all within three feet of each other?

A Yeah.

Q Is that .....

A The .....

Q Was there anything that would have -- go ahead. I didn't mean to interrupt you.

A The trooper and I and David? Yeah.

Q And Mr. Bartlett, all three of you.

A Yeah. We were -- we were in pretty tight. But it -- I still had my personal space, you know, or else I would

* * *

[p.26]

Q When the shove happened, I guess, what was your immediate reaction? I mean, when this goes down in front of you, what were you thinking?

A I know when it happened, I was just like, what the heck? Never seen somebody get arrested right in front of me, and I -- I didn't even know what to say, really.

Q Did you think Mr. Bartlett had done anything that warranted this treatment?

A No, besides for maybe coming across scary because of his loud voice. That's it. That's all I could think of.

Q Was it any louder than anybody else that was trying to talk over the music?

A No, the troo .....

MS. MOORE: Objection; form.

A The trooper was just as loud as Russ it seemed like to me. We all kind of had to raise our voices.

Q As you look back on it, do you think – is there anything that Mr. Bartlett did that you feel escalated this to the point where the trooper shoved him?

MS. MOORE: Objection; form.

A Maybe say that you don't have any right, so maybe like doubting the trooper's power, maybe. I don't know.

Q So he questioned his authority?

A Yeah, yeah.

[p.27]

Q Okay. Now, I want to talk about from the point where Mr. Bartlett gets shoved, okay. We're going to move forward with that. In – as the troopers are grabbing hold of Mr. Bartlett, did you observe Mr.

Bartlett do anything that you could perceive as he tried to throw a punch at anybody?

A No. Besides, the troopers pulled his arms back like that. So if there's a trooper in front, maybe he would think that he raised his fist at him, but, no, he just got his arms pulled back and taken down.

Q So it was the troopers that pulled his arms .....

A Yeah.

Q ..... back?

A Yeah. He did not – only thing that he done wa -- he was trying to not eat the snowbank. You know, he was fighting that. That's it.

Q Did you observe Mr. Bartlett try to head butt either of the troopers?

A No.

Q Did -- you know, I'll -- let me represent to you that it says in the troopers' report here, they claim that Mr. Bartlett tried to head butt one of these troopers. Did you see anything that could, in any way, shape or form, be construed as an attempt by Mr. Bartlett to head butt one of the troopers?

[p.28]

A Absolutely not.

Q Did you see anything that you would describe as Mr. Bartlett tried to fight the troopers?

A No.

Q The time frame -- they jumped on Mr. Bartlett to the time he was in the snow. What's your recollection of it? I mean, you saw it on the video. What's your recollection of how long that took?

A It was fast, it seemed to me, standing right there. It happened kind of like -- but also, I -- I don't know, you know .....

Q Have you really digested even what had occurred .....

A No.

Q ..... before Mr. Bartlett was on the ground?

A My heart was already beating because we were at there, and then that happened, and I was just -- I didn't even know what to say. I started shaking, you know, because it was scary.

Q So let me work through after. So they get Mr. Bartlett on the ground; they handcuff him, right?

A Yeah.

Q I want to make sure I understand every thi -- every bit of conversation you heard after that. Work me through that again, if you would.

A The trooper -- or Russ said, I want to talk to your --

[p.29]

your boss or your sergeant or whatever. And I don't remember the troopers ever responding back. I do remember the trooper saying that he was going to get tased. And then they just picked him up and hauled him off. And I couldn't really hear him

yelling at the car, but I – you – I could, but I couldn't depict what he was saying.

Q Okay. And so then the trooper – Mr. Bartlett got arrested. He got taken back to the truck. And then you say the trooper then did come back and administer a breath test?

A Yes.

Q And how confident are you, Mr. Walker, that the trooper, at no time, asked you whether or not you knew Mr. Bartlett?

A He never asked me that.

Q And could you – I mean, the trooper claims that he asked you if you knew Mr. Bartlett and you told him that you did not know Mr. Bartlett.

A I would have never said that, because I knew him from – we've been – we were together for at least two days prior to this incident, you know, and we've met prior at a friend's house barbecue, so .....

Q Did you say anything that anybody could possibly construe as a statement you did not know Mr. Bartlett?

[p.30]

A No.

Q That's just a bald-face lie?

MS. MOORE: Objection; form of the question .....

A Yeah.

MS. MOORE: ..... foundation.

Q You said, yes?

A Yes.

MS. MOORE: Objection; same objection.

Q Now, at the time that the troopers arrested Mr. Bartlett, did you have any sense of whether or not a riot was getting ready to break out?

A No.

Q That -- there was no riot that you saw there?

A No.

MS. MOORE: Objection; form.

Q Did you see anything that you thought led you to believe that maybe a riot was about ready to happen?

MS. MOORE: Objection; form, foundation.

A No.

Q Okay. Did any of the troopers ever say anything to you about they thought there was a riot about ready to happen?

A There was -- no. I -- no.

Q Was there anything about the way Mr. Bartlett walked -- you say you saw him about, you know, three or four feet

* * *

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF RUSSELL BARTLETT
July 27, 2015

APPEARANCES:

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* * * *

* * *

[p.30]

was working the jail that night. And I believe he works over here at the courthouse.

Q Over -- when you say over here .....

A At the courthouse.

Q The Fairbanks courthouse?

A Fairbanks courthouse.

Q Have you seen that person over there?

A I have not.

Q Then what makes you think he works at the Fairbanks courthouse?

A He had told me so.

Q When did he tell you that?

A During -- during my -- during my incarceration at the jail at the Arctic Man.

Q What else did you talk about with him?

A I asked him if he could release my -- or loosen my cuffs on my hands, because they were very tight.

Q And did he do that?

A He did. He brought them around from the back of -- behind my back where I was cuffed, and I brought them around to the front. And at that time, I -- I had told him and -- to take notice of how -- the color of my hands. They were purple, because the cuffs were so tight on my wrists and cutting into my wrists, that it cut off the circulation to my hands.

[p.31]

Q Had you told anyone before that, that your cuffs were tight?

A I did not. My hands started hurting -- hurting behind my back.

Q When did they first start hurting?

A I can't tell you exactly when.

Q Was that while you were in the tent?

A It was while -- while I was in the -- in the jail there at the tent. I started noticing my hands going numb and hurting.

Q And the -- and when you first told the trooper that was watching the tent, that they were -- how long did it take him to move them to the front?

A He did it immediately.

Q All right. Did you ask for any medical help at that time?

A I did not.

Q Did you ask for any medical help at any time when you were at the tent?

A I did not.

Q Did you believe you needed any medical help at the time?

A No, I did not. I didn't believe I needed any medical help.

Q So Arctic Man 2014, was that -- how long was the total

* * *

[p.61]

A Uh-huh.

Q And did you -- did your whole group go over to those people?

A The three of us, yes, went over to the people that he was speaking to, yes.

Q And di -- what ha -- what did you do next?

A I just stood there. I may have spoken with David Krack. I -- I don't recall. I don't recall.

Q Do you know the names of any of the people that McCoy knew?

A I do not.

Q And how long were you there?

A I want to say 10 minutes. I think it was 10 minutes.

Q What did you do next?

A I didn't do anything next. Actually, while I was standing there, is when Trooper Nieves came up and tapped me on the shoulder.

Q Before Trooper Nieves tapped you on the shoulder, had you seen any troopers at the party?

A No, just Trooper Nieves.

Q Did you see any troopers trying to -- running after any minors?

A No, I did not.

Q So Trooper Nieves was the first trooper that you saw?

A That I recall seeing, yes.

[p.62]

Q And the first time you recall seeing him is when -- was when he tapped you on the shoulder?

A That's correct.

Q And what did he say to you when he tapped you on the shoulder?

A He asked if he could talk to me.

Q And what did you say?

A I asked him, what for?

Q What did he say after that?

A His response -- well, he -- he kind of -- his demeanor changed. He was kind of just normal just asking that question, can I talk to you for a second. When I asked him the question, what for, his demeanor

changed. He -- he kind of, you know, wrinkled his face and -- and -- and -- and said, but you look like you're pretty interested in what was going on over there, kind of in that tone, in a -- in a more aggressive tone.

Q Did he say anything else?

A He did not.

Q And what .....

A Af -- right after that?

Q Well, what did you say when he said, you look like you were pretty interested?

A Well, I was kind of taken aback at first with his -- with his -- his tone. You know, I didn't know why

[p.63]

he -- why it had changed with asking him a simple, you know, question. And so I simply stated, you know what, I don't -- I don't -- I don't want to talk to you, because I didn't like the way that his demeanor was towards me.

Q And then what happened?

A Well, he just stood there looking at me, and I -- I -- I asked him, am -- am I free to go or -- or am I being detained?

Q And what did he say?

A I don't recall him saying anything. He just turned around and walked away.

Q Were there any troopers – other troopers in – nearby when Troop – when Sergeant Nieves was talking with you?

A No, he was the only one that I saw.

Q Did you see anyone filming or videotaping at that time?

A I thought I saw a camera at that time, but I wasn't sure.

Q Where was the camera?

A At – I believe it was over – what I recall, it was over by the – the motorhome.

Q And what was the ca – what was the – I don't know what you mean, you thought you saw a camera.

A I saw a camera and lights over by the motorhome with

* * *

[p.68]

Q Let me ask you this. Was there a – was there any alcohol outside the motorhome near the doorway?

A I don't recall. I don't recall.

Q Did anyone come .....

A I .....

Q ..... outside of the – out of the motorhome?

A No. I don't recall anybody coming out, no, from when I was looking over there in that direction.

Q It's possible someone came out; you just don't recall. Is that what you're saying?

A Yeah, it's possible someone came out. I -- I just don't recall.

Q Did you yell anything at Sergeant Nieves while he was at the door to the motorhome?

A No.

Q Did you yell anything at Sergeant Nieves at any time before he approached you?

A No.

Q Did you yell anything at the people in the motorhome while Sergeant Nieves was approaching the motorhome or near the motorhome?

A No.

Q Did you yell anything at any time that was something like, you don't have to allow troopers to search the motorhome?

[p.69]

A No, I don't recall saying anything like that.

Q Did you say anything at any time that you don't have to let him in?

A No.

Q So you've talked already about your conversation with Trooper Nieves. Is there anything else that you said to Trooper Nieves or he said to you near the motorhome that you -- we haven't discussed?

A I think, no. I think he -- I told you everything that he said that I recall.

Q And when he tapped you on the shoulder, where was the camera guy?

A I don't recall. I don't recall seeing him after that.

Q And where did Trooper Nieves go?

A After he tapped me on the shoulder and we exchanged -- or .....

Q Right.

A He walked off towards the back of the motorhome, in that direction.

Q All right. I pulled out a piece of paper I was going to use, and then I wrote on it.

MS. MOORE: Do you have a pen?

COURT REPORTER: I do. Do you want colors, magic markers, pencils?

MS. MOORE: A couple colors would be good.

* * *

[p.76]

there.

Q What were you wearing?

A I was wearing a Slednecks jacket, I believe, a backpack, kind of like a Sherpa hat, bunny boots, and black -- black thermals.

Q And what was David Krack wearing?

A He was wearing -- I believe he was wearing some kind of parka, and I don't know what else. I think a pair of bibs, snowmachine bibs.

Q What color was his parka?

A I don't recall.

Q What was McCoy wearing?

A McCoy was wearing, I believe, like a -- it was a -- I want to say Carhartt jacket. Oh, excuse me, I'd like to rephrase that. I was wearing a black Carhartt jacket. I don't know what I -- I can't remember -- what did I just say? Yeah, I was wearing a black Carhartt jacket, backpack, yeah, and a Sherpa type hat and it comes over the years with little dingle balls on it.

Q So what did you do next?

A Well, I was in the middle of the crowd there, and I had noticed that -- that -- I scanned and looked around and noticed that McCoy was not next to us anymore. So I scanned around and saw him at the edge of the crowd.

[p.77]

Q At the edge of the crowd .....

A Uh-huh.

Q ..... like -- can you put a -- like an X as to where -- the vicinity that you saw McCoy, like where he was?

A Yeah, I mean, it was somewhere over .....

Q Okay. So the X is like -- so where you saw McCoy?

A Roughly.

Q Got it.

A Yeah, I mean .....

Q And what was McCoy doing?

A I seen him conversing with Trooper Bryce Weight.

Q Okay. Could you hear what they -- what .....

A No, I could not hear anything that was being said.

Q Okay. So what did you do when you saw McCoy speaking with Trooper Weight?

A I tapped David Krack on the shoulder and got his attention, and pointed over to where McCoy was with Trooper Weight.

Q And then what?

A And then we walked over there.

Q You and .....

A David Krack.

Q ..... David. You walked over to Trooper Weight and McCoy?

A Yes, yes.

[p.78]

Q And do you stop? You just went straight to Trooper Weight and David -- or McCoy?

A Yes, we walked straight there.

Q And who was in front or did you walk side by side?

A I believe we were side by side.

Q And how would you describe your walk with -- in terms of speed?

A Normal.

Q Normal speed?

A Normal -- my normal walking speed, yeah.

Q And then what did you do?

A I -- I -- I walked up to Trooper Bryce Weight and made the statement that, you don't have the authority to talk to him without a parent or guardian present.

Q And then what?

A And then he simply looked at me and go -- and said, no, and hit me, both palms of his hand into my chest, knocking me back at least five feet, five, six feet.

Q And then what?

A And then -- and then when I was flying back, that's right when Sergeant Nieves was walking up to us. And then when I was flying back, he scoo -- grabbed my left arm and started yelling, get back, get back, get back .....

Q And then .....

[p.79]

A ..... while dragging me forward away from the RV this way -- away from the RV.

Q When Sergeant Nieves grabbed your arm, you recog -- did you recognize him?

A I did not.

Q Did you recognize him to be a trooper?

A I -- I -- I did after I turned and -- and looked at him and saw -- saw him. When he initially grabbed me, I -- I was startled and did not know who was grabbing me.

Q But you did turn toward him?

A I did towards -- turn him -- and saw that he was a state trooper.

Q And then what?

A I complied with his orders. He was yelling at me to get back, and I let him direct me wherever he was directing me to.

Q And then what happened?

A At that point, Trooper Bryce Weight walks up to me and grabs my right arm, and then they both start yelling at me to get on the ground, get on the ground, rapidly and loudly. And then Trooper Bryce Weight tries to foot sweep me and take me down to the ground, which he -- he missed my foot. But at this time, after I've had -- basically, do not know what's going on whatsoever. I have no idea why they're yelling at me, why they're

[p.80]

trying to tell me get on the ground. But at thi -- the point I say -- I said something, I say, what's going

on or something like that. I can't remember my exact words. I think it was, what's going on. They kept yelling at me to get on the ground, get on the ground, and trying to foot sweep me again. And finally, I -- as that short period of time went by, my -- I -- I -- I -- you know, I was like, whoa, you know, I'd better comply with what these guys are saying. They -- they -- they mean business. So still not knowing what's going on, I complied and got down, started getting down to my knees while they were jumping on me and trying to force me down on the ground. The reason why I was going so slowly is because I have back injuries and -- and I didn't want to further hurt my -- my back by just flopping on the ground, so I went down very slowly.

Q So you controlled the speed at which you were taken down to the ground?

A I -- I tried to. I didn't -- not really control. It's just, I didn't flop right on the ground. I guess you can say it's controlled. I -- I went down with them pushing on me.

Q All right. So I'm going to ask you a few more questions about that. So when you first approached

* * *

[p.83]

A You said at any -- any time, and I wanted to -- I wanted to rephrase my -- my -- my answer, being that -- being that it -- it did raise up after the fact that he -- after he assaulted me, my hand did come up during that -- that period, when he struck me.

Q Okay. So your version is that he -- why don't you describe what happened.

A After I made that statement to Trooper Bryce Weight and he said, no, and struck me with both palms of his hands in my chest, I went flying backwards. At that time he hit me, my -- my right hand had rose -- rosen [sic] up a little bit.

Q It rose up a little bit?

A Yeah, it rose .....

Q From where?

A From the side -- my side down here .....

Q And did .....

A ..... alongside my hand -- alongside there.

Q And your hand is down by your leg?

A Yeah. Well, it's down by my side, yeah.

Q Why don't you go ahead and stand up and show me where your right hand was when you stopped in front of Trooper Weight.

A Okay. This is how I recall it happening. I had it down, like -- kind of like this.

[p.84]

Q So it's by your -- your right hand is about five inches from your hip?

A Yeah, out like this, probably, holding it at this -- like this.

Q You were holding it with your palm up when you went to Trooper Weight?

A No, I walked up to him and I stopped and I probably was standing here like this.

Q Standing with your -- both arms out about five inches from your hips?

A I was holding my beer in this in hand like this. I was holding this hand, probably down something to this (indiscernible - simultaneous speech).

Q And you said Trooper Weight said, no.

A Uh-huh.

Q And then he -- how did he push you?

A Do you want me to demonstrate by showing you?

Q Well, you can just verbally say how he pushed you.

A He lunged forward at me and struck me with force with both his palms of his hands against my chest.

Q Okay. And where -- he put both hands on your -- on -- his right hand and his left hand on your chest.

A Simultaneously on my chest.

Q And pushed you back?

A And hit -- knocked me back.

* * *

[p.95]

immediately down?

A Not immediately. It took me a second or two seconds to easily slide out, because I wanted -- I didn't want to just flop down on the ground, so I -- I slid out -- my arms out and went down prone like this.

Q Why didn't you immediately go down to the ground when the officers pushed your back?

A Because I was still in shock. I didn't know what -- what was going on and I'm -- I'm trying to process this, so it -- it takes you a few seconds to process a command like that. When someone is yelling at you, you're in a state of shock and you don't know what's going on. I was -- I was -- I was -- I was confused. So then I -- I -- finally, after I had time to process what they were saying to me, because this happened so quick and forceful, then I -- I slid out, like I just explained to you, onto my -- onto my chest and down to the ground.

Q And when you slid out, you relaxed your muscles?

A I was laying on the ground.

Q Did you relax .....

A Yeah, I was relaxed.

Q ..... your muscles?

A I was -- I was laying on the ground like this, had my arms up, just laying on -- on the snow in front of me.

* * *

[p.99]

Q Immediately over to the trooper vehicle?

A Yes. I believe it was immediately.

Q Okay. And then what?

A Then -- then they held me there and I still, at this point, didn't know what was going on. I had no idea. I hadn't been told anything by any of the troopers involved. And -- and I -- I mentioned I asked what -- what -- you know, what's going on? And Trooper Nieves just says, you're -- you're -- you're going to jail. And I go, for what? And he goes, for harassing my trooper. And this is by -- when we're over by the vehicle. And I said, I was not harassing your trooper. And he -- then he made a statement and said that I -- I could have walked away. And I go -- and then I made the statement of, I want your commanding officer right now. And he said, he is the commanding officer. He's the sergeant in charge.

Q Anything else?

A Yeah, at the point after they had me handcuffed and next to the vehicle, he puts me inside the vehicle and go and he said, bet you wish you would have talked to me now, while he's standing in the doorway with the door open. And I said -- I said, what -- what are you ta -- I said, that's ridiculous, something to that respect, what are you talking -- that's ridiculous.

[p.100]

And why am I being arrested? And -- and then he goes -- and then he says, you're done. And I go, no, I'm not done. And he shuts the door. And that was the last time I remember seeing Trooper Nieves.

Q Did you speak to Trooper Weight at any time after the arrest?

A I do not recall.

MR. WILSON: Ms. Moore, can I make one point for you? Just in terms of, if you could consider what he said there an amendment to his depo -- or his interrogatory responses. There was a spot in there where, you're done and this and that, was a little confusing in his interrogatory response and .....

MS. MOORE: If you want to ask follow-up questions, you're free to do that and .....

MR. WILSON: Okay. That's fine. I'm not going to ask him a question. I'm just letting you know .....

MS. MOORE: Well .....

MR. WILSON: I'm asking you to consider that an amendment to his response.

MS. MOORE: And you can amend the responses.

MR. WILSON: I just did.

Q So have you had any medical care at all associated with your arrest?

A No.

* * *

Exhibit D

In The Matter Of:
RUSSELL BARTLETT v.
LUIS NIEVES, et al.,

LUIS NIEVES
July 31, 2015

Metro Court Reporting
405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
metro@gci.net

* * *

[p.16]

Q ..... you tape record it. Okay. I got a little different question than that.

A Okay.

Q My question is, you walk up to Ms. Moore on the street .....

A Right.

Q ..... and you're going to approach Ms. Moore and you want to ask her questions about a shoplifting incident.

A Right.

Q Okay? Is -- have you -- is it -- have you been told that in that context you should activate your recorder?

A Yeah, we should.

Q Whenever possible, right?

A Whenever possible.

Q And has anybody explained to you why that -- I mean, given you the reasons for that? You understand the reasons why you've been told that?

A Yeah. It's to help refresh your memory and also to preserve evidence if a -- if -- if something evidentiary comes from that -- from that accounting.

Q And have you found that it serves those purposes well in the course of your career?

A Yes.

Q What have you been -- what kind of training have you received about the importance of whenever you conduct an

[p.17]

investigation you filed -- you're going to file charges against somebody, you've arrested them, that you gather all of the evidence that's available to document what occurred?

A We do the base -- best of our ability and yes, we -- we're instructed on gathering all the evidence that's available.

Q Okay. You've been told that's how you should be a police officer, right?

MS. GALBRAITH MOORE: Objection, form of the question.

Q (By Mr. Wilson) She makes – just so you know, she makes objections. Unless she tells you not to answer you just go ahead and answer. All right?

A All right. So, yeah, we -- I mean – re -- repeat the question again?

Q Sure. You – you're at the point where you've completed your investigation.

A Right.

Q You've – you've arrested somebody. You know you're going to file charges against them.

A Uh-huh (affirmative).

Q Is it appropriate -- have you received training at that point in time to say, hey, let's try to round up all the evidence that would support the accusations we're making

[p.18]

against this defendant?

MS. GALBRAITH MOORE: Objection, foundation, form.

A We present whatever evidence we have right then and there. If there's more evidence then -- that we feel that we're directed by the DA or during the course of our investigation hey, we may need more to support these charges then we'll go and gather that evidence. Otherwise, whatever's present at the time whether it be observations and testimony of fellow -- fellow officers on scene, witness statements, that's the kind of evidence that we're going to be gathering.

Q (By Mr. Wilson) Videos?

A If -- if they're available and we know the video was taken, if we know the quality of the video whether the video is going to applicable, yes.

Q So, your training has been that if you know there's a video of an incident you've been involved in where you bring charges you should gather that evidence?

MS. GALBRAITH MOORE: Objection, ...

A No.

MS. GALBRAITH MOORE: ..... foundation.

A No.

Q (By Mr. Wilson) Okay. Tell me what's -- what's wrong with that statement?

A Because it .....

* * *

[p.20]

that's -- that sort of thing.

Q (By Mr. Wilson) Let's go back to even your example of a -- of the cell phone incident that you see someone with a cell phone taking -- let -- per -- appearing to take video of an incident .....

A Uh-huh (affirmative).

Q ..... you're involved in. There's nothing stopping you from going up to that person and asking them if you could obtain a copy of that video, correct?

MS. GALBRAITH MOORE: Objection to the statement calling for a legal conclusion, foundation, form.

A It's -- it -- it depends. I mean, it depends on the scenario, it depends on -- I mean, it -- it depend -- every situation is different. I can't give a blanket statement to whether we go to every single person that we think is pointing a phone at us for example.

Q (By Mr. Wilson) That wasn't my question. My question actually was, there's nothing stopping you from going up to that person if you want to and saying, hey, I -- it looked to me like you were taking a video here, could I get a copy from you?

MS. GALBRAITH MOORE: Objection, foundation.

A There's -- I don't see that there's anything that would stop me from asking.

Q (By Mr. Wilson) Do you make charging decisions against

[p.21]

an individual based on whether or not you perceive that they've cooperated with you?

A No.

Q Do you make charging decisions against an individual based on whether or not you perceive they were polite?

A No.

Q Is there anything about somebody's demeanor at a scene that would impact your decision making when it comes to whether or not you would advance a charge?

MS. GALBRAITH MOORE: Objection, foundation, form of questions.

A Not -- I mean, that's just too -- it's too broad of a question. There's too many it's -- there's too many dynamics involved for me to answer something like that because no two situ -- situations are the same ever, especially in this line of work.

Q (By Mr. Wilson) So, give me an example of when it would be in your mind a charging decision would depend on someone's demeanor?

A I don't know that -- I don't know about demeanor. I think it -- it's the totality of -- of the situation. For instance, if you're doing a traffic stop you stop two people for the same exact sp -- speed violation and one person tells you that the reason I'm speeding is 'cause I'm late to the Aces game and the other person tells you

[p.22]

I'm late because my baby's -- my wife's about to give birth. They both essentially have committed the same violation but you -- we have the latitude to treat those two scenarios differently so it dep -- it depends on the facts.

Q Okay. So, let's take this scenario. You pull over one person over for speeding doing 55 in a -- in a 35 or whatever, you know, ...

A Uh-huh (affirmative).

Q ..... 55 in 50.

A Okay.

Q And that person is polite and cooperative and they say hi to you and they answer all your questions and you decide that you don't want to advance a charge against them for whatever reason. Okay. That's one scenario. Now, we have another scenario where you pull somebody over and the same exact circumstance, they're doing 55 in a 50. You walk up to them and you ask them for their ID and they produce it to you and then you ask them what are you doing and they say I don't ha – I got nothing else to say to you.

MS. GALBRAITH MOORE: Objection, form, foundation.

Q (By Mr. Wilson) Does that in your mind give you some indication as to whether or not you should charge that individual with that ticket?

* * *

[p.28]

A I was – I was the one in charge.

Q You were the Sergeant?

A I was – yes, and I was the senior person present and the senior person on call and on shift at the time.

Q When -- let me back up here. And how did it come about that a -- the Channel 2 news crew was at the Arctic Man with the pol -- with the Troopers?

A They made a request through the Public Information Office at Headquarters and they received permission to ride with the -- with the Alaska State Troopers to observe the Arctic Man, the event. And Lieutenant Piscoya directed me to have the news crew ride with me.

Q Did you play any role in Lieutenant Piscoya's decision to have the news crew ride with you?

A No.

Q I mean, did you -- did you request it?

A No, I was assigned.

Q Do you believe that having a news crew with you in any way impacts how you go about doing your job as a police officer?

A No.

Q When did you arrive at the party that -- I mean, I'll ask you this. If we can ref -- if we refer to it you understand what I'm saying at .....

A Uh-huh (affirmative).

* * *

[p.30]

the Troopers and the public.

Q And -- so, at the time you respond to Mr. Sadler's party you have this TV crew with you, is that correct?

A Yes, it's one cameraman with a camera.

Q And who was that cameraman?

A I don't remember his name.

Q Does John Thain ring a bell?

A Yes. Yes, John Thain.

Q And at the time you arrive you know that this cameraman, Mr. Thain what he's up to is he's following around with you videotaping, correct?

A Yes. He's making the news story.

Q How long had you been with Mr. Thain prior to your arrival at Mr. Sadler's party?

A I think several hours. I'm not sure there -- how long but it was several hours at that point.

Q And as part of this cameraman thing you were mic'd up with -- with something specific to the cameraman or you had your own mic or how was it .....

A No. They -- they placed a mic on me, Mr. Thain placed a mic on me.

Q And how did he -- how did he do that, what did he do?

A It's their wireless mic, it has like a -- a little box receiver and then a -- a microphone similar to what I'm wearing right now and it's a wireless.

* * *

[p.38]

Q And you knew that before you got out of the vehicle and approached Mr. Sander's party, correct?

MS. GALBRAITH MOORE: But -- okay.

A I don't know what he was filming at that point.

Q That's not what I asked you. At at -- my question was you knew that the reason he was there was to videotape to make a news story and you knew that before you got out of the car and approached the Sadler party?

MS. GALBRAITH MOORE: Objection, form of the question and foundation.

A I knew that he was riding with me to film Arctic Man to make a news story, yes.

Q (By Mr. Wilson) And you knew that before you got out of the car to approach Mr. Sadler's party?

A I knew that before I even left headq -- the command center with him.

Q At -- the -- this -- we'll come back to this but after we get done with you -- after you've dealt with the situation there at Mr. Sadler's party did you ever go back to Mr. Thain and ask him whether or not he had videotaped any of these events so that you could have that record of these events?

A No.

Q Why didn't you ask him?

A It's not my -- it's -- it's not my property. It's and

[p.39]

I -- and I don't know what he was recording, I don't know when he turned on his recorder or not.

Q And the way you answer those questions is you ask him, right?

A I had no obligation to ask him.

Q Whether you had an obligation to or not why didn't you?

A Because I had no obligation to do so, there was no reason to.

Q So, you have somebody who probably is videotaping the events that take place in which you're going to charge somebody with a crime and your testimony is that you have no reason to ask them whether or not they videotaped .....

MS. GALBRAITH MOORE: Ob .....

Q ..... those events?

MS. GALBRAITH MOORE: Objection, form and foundation.

A He -- he's a member of the media, I have no idea nor any control over what he's filming, whether he turns on his recorder or not. My obligation is to ensure that my officers are safe, that people are obeying the law and if someone's sa -- needs to be arrested they're arrested.

Q (By Mr. Wilson) Go back to my question. Is it your testimony that you go to a incident like this with Mr. Sadler's party, you jump on somebody, physically arrest them, okay, intend to bring charges against them and that

[p.40]

there is quote: No reason to ask the video guy whether or not he video recorded those events, is that you testimony?

MS. GALBRAITH MOORE: Objection, ...

A I .....

MS. GALBRAITH MOORE: ..... form, foundation. That's -- that was not his testimony and don't -- don't try .....

MR. WILSON: Well, whatever.

MS. GALBRAITH MOORE: ..... (indiscernible - simultaneous speaking).

MR. WILSON: That's -- that's why I'm asking him.

MS. GALBRAITH MOORE: (indiscernible - simultaneous speaking) those face were not on the table.

A No. My -- my obligation is to figure out why your client was trying to attack my -- my Trooper and why your -- your client was being aggressive toward my Troopers and why we eventually had to arrest him because he was acting in a manner that wasn't reasonable and was creating a dangerous situation for all my officers there.

Q (By Mr. Wilson) Let me ask the question a different way and hopefully I can get an answer this time. Why isn't that enough of a reason to go to the -- Mr. Thain and say, hey, you just were there, right there acting like you're videotaping this that's going on here, did you actually videotape it? What .....

[p.41]

A There's no obligation.

Q Mr .....

A We have more than enough .....

Q ..... Mr. Nieves I'm not asking .....

A ..... we had more than enough.

Q ..... about your obligations, okay.

A Uh-huh (affirmative).

Q I'm asking you why isn't that a sufficient reason to ask him?

MS. GALBRAITH MOORE: Just for clarification what is the that? Why didn't -- what is .....

Q The incident that took place with Mr. Bartlett, the fact that you know Mr. Thain was there probably videotaping it, why isn't that a sufficient reason for you to ask Mr. Thain whether or not he videotaped the events?

A I don't know if he recorded and I didn't need anything from him at the time because I already had testimony from my Troopers that were on scene

and my observations of a crime that was committed which was disorderly conduct and resisting arrest.

Q And you also knew that none of you there were activating your tape recorders to record the events, correct?

A I had no idea.

Q Well, you knew you hadn't, ...

A I had no .....

[p.42]

Q ..... right?

A I knew that I – I hadn't at the time but I had no idea whether or not any of my other Troopers had activated or deactivated. I had no idea.

Q Well, they all carry the same device you carry, right?

A Some of them do. I – well, let me see, some have the new ones, some have the old ones and I don't know who had what.

Q Well, given the importance of audio recording, we've talked about your training and that, why didn't you at that time inquire and determine whether or not anybody had audio taped these events?

A Because all of the Troopers were able to document what they saw.

Q So, everybody just needs to believe what the Troopers say and that's fine enough for you?

MS. GALBRAITH MOORE: Objection, form, foundation.

A Well, there's -- there's no history of dishonesty among any of the Troopers involved. We have a -- a -- a -- we -- our hiring practices clearly show that between our -- our backgrounds, polygraphs, psychological examinations that far exceed any backgrounds that any attorneys or any other profession go through. We -- I mean, when you even look at Troopers right now, Alaska State Troopers will have thousands of people apply, only a dozen people will

[p.43]

get hired. I mean, we -- we are set apart, we're set apart because we're known to be honest, we hold people accountable for criminal activity and that's what we do. I mean, we're -- we're -- we have a solid reputation.

Q (By Mr. Wilson) Well, why don't we just .....

A A very solid reputation.

Q ..... dispense with the advice you received at your training that you should -- I mean, why don't we just go ahead and get rid of the re -- the requirement that you tape record things because according to you it's good enough to just take whatever the Troopers say as gospel?

MS. GALBRAITH MOORE: Objection, form, foundation.

A It's -- that's why it's not mandatory in all loca -- in -- in all situations. People understand that Troopers

we're -- we're held at a higher standard and that's why weren't not able to hire every -- hire everyone and anyone that applies for the position. We're held to a higher standard and there was multiple Troopers there.

Q (By Mr. Wilson) So, the long and the short of it is you never asked Mr. Weight whether or not his recorder was activated, is that correct?

A Is -- repeat the question. I'm sorry.

Q Did you ever ask Trooper Weight on the evening of these events whether or not he had activated his recorder?

A I don't remember if I did.

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Q Did you ever ask Mr. Thain who was standing there pointing the video camera at these events whether or not he had videotaped these events?

A I don't believe I did.

Q At what point did you -- did it come to your attention that there was no audio of these events?

MS. GALBRAITH MOORE: Oh, a -- it -- and -- objection, form, foundation. Whose audio are you talking about, Mr. Thain's or the Troopers?

Q (By Mr. Wilson) No, Trooper recorded audio of these events.

A Didn't realize it until after we had already done the reports and the person was already -- your defendant was already in the -- in custody and --

Q So, at the point -- so, and what was that point? Give me the date and time as best as you can recall.

A I'm not sure. Maybe -- I don't know if it was later that day or sometime shortly after Arctic Man. I don't remember.

Q At the point you learned that there was no Trooper audio documenting the events with Mr. Bartlett why didn't you at that point ask Mr. Thain whether or not he had a video of these inci -- of this incident?

A Still wasn't necessary. We had multiple Troopers present that all saw the same thing and all testified to it.

[p.45]

Q And who are these multiple Troopers that all saw the same thing and all testified to it?

A Yeah. Trooper Weight and I, I mean, that's two Troopers, that's more than enough.

Q Is it -- do you ever have the thought go through your head that it's not up to me to determine what's enough that it's up to the -- ultimately the jury and possibly the defendant to say that hey, it's not up to Trooper Nieves to determine what's enough. I should try to do everything I can to document the situation?

MS. GALBRAITH MOORE: Objection, form and fo .....

Q Have you ever had that thought?

MS. GALBRAITH MOORE: Objection, form, foundation.

A We presented everything that we needed to hold your defendant accountable for his criminal activity that day.

Q (By Mr. Wilson) That's not my question. Okay.

A That's my answer.

Q Well, let me go back to my question. Have you ever had the thought that it's not up to you to make that decision as to whether or not it's enough to just count on what you and Trooper Weight say and disregard gathering evidence that could definitively establish one way or the other whether what you say is true or false?

MS. GALBRAITH MOORE: Objection, ...

A We .....

[p.46]

MS. GALBRAITH MOORE: ..... form, foundation.

A We provided all the information necessary with our testimony of what happened that day.

Q (By Mr. Wilson) That's not my question. You want to sit here all day and answer the -- I mean, I'd asked you to answer my question. Have you ever had that thought that that's not your decision to make,.....

A No.

Q ..... that that's something -- you've never had that thought?

A No.

Q Okay. Thanks for answering my question. See how easy that is.

MS. GALBRAITH MOORE: Mr. -- Mr. Wilson.

MR. WILSON: Well, hey, I just wanted him to answer my question and then I won't get like this and we don't need to go down this path. Okay. When I ask the same question three times it starts to irritate me. I apologize.

Q When did you -- at what point in time did you discover that, in fact, Mr. Thain had videotaped at least a portion of these events and still had some video evidence of that?

A I believe it's when the ADA had advised me of -- he had asked the DA to ask me if -- if I was aware of footage and I believe that at one point someone brought to my

* * *

[p.65]

started speaking?

A I believe I tapped him on his shoulder, he turned around.

Q Okay.

A And .....

Q And what did you say?

A I said, hey, Mr. Bartlett I just -- well, I didn't know what his name was then -- I said hey, sir, I -- I just

wanted to explain to you why we're here right now. As you saw we're trying to secure the alcohol and he starts yelling at me saying that I don't want to talk to you, I don't have anything to say with -- say to you, you need to get out of here if you're done. So, at that point I had to make a decision. You know, it's -- this guy is highly intoxicated, he's not being reasonable, do I stay here and then run the risk of now he ends up crossing that line and becoming disorderly or can I just leave and defuse the whole situation. I chose to leave.

Q And what was it that you believed that indicated to you that Mr. Bartlett was highly intoxicated?

A Slurred speech and white watery bloodshot eyes, thicks -- the -- his level of aggression which made zero sense to me, and his failure to understand the circumstances, the fact that there's juveniles consuming alcohol and the fact that that's actually a danger.

Q And where is it in your supplementary report where you

[p.66]

talk about your observations of Mr. Bartlett and him being highly intoxicated?

A I didn't mention it there.

Q And why is that?

A There was no need at the time. It was the fact that he was a -- that he was combative and the facts of the case was that he went -- he created a hazardous situation for my Trooper.

Q So, you -- are you telling me, I mean, we've talked about it's important when you write a report to put the important details in, right?

A Right.

Q Okay. Do you think it's unimportant to your report that your ob -- observations and your claim that Mr. Bartlett was highly intoxicated?

A No, I -- I mentioned that he was combative, I mean, that's --

Q Is combative the same thing as intoxicated?

A Well, there's no -- there's no -- there's no -- you can't use alcohol as an excuse for being combative.

Q Well, actually let me ask you. Where is it you say he was highly combative?

A Where he -- where he began shouting. I mean, that's completely .....

Q Okay. Read the words .....

* * *

[p.80]

MS. GALBRAITH MOORE: You can answer the question, it's okay.

A No, I can't read minds.

Q Okay. And so, this idea that you have, I mean, you -- you watch this video and according to you -- you're looking at the same video I am, right? And you look at that video and your conclusion is that

Mr. Bartlett was just getting ready to attack Mr. Weight, right?

A Yes.

Q And the fighting that Mr. Bartlett does to you -- does with you that you're describing do you believe at least that it's fairly and accurately depicted on this video?

A To -- to the best of my observations and from what I'm seeing yeah, it confirms what I saw at the time, what I perceived was happening at the time.

Q Did you perceive something to be happening in terms of Mr. Bartlett fighting with you that you believe is not captured by the video?

A The tensing, the -- the amount of force that we had to use to restrain him, that's something that you're never going to be able to see on video.

(Pause - reviewing documents)

Q Do you agree with the general concept that when you have a Trooper who is by himself that is the point at which they are most vulnerable to being harmed?

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MS. GALBRAITH MOORE: Objection, form, foundation.

Q (By Mr. Wilson) As opposed to whenever there is two Troopers, ...

MS. GALBRAITH MOORE: Same objection.

Q ..... I guess my -- I'm just kind of my -- what my question is going to be?

MS. GALBRAITH MOORE: Same objection.

A I -- I mean, it -- it's hard to answer that. It's very difficult to answer that.

Q (By Mr. Wilson) Let me ask you thi -- ask it this way then. In this particular incident here do you believe that Mr. Weight was safer there by himself conten -- contacting Mr. Bartlett than he was after you arrived at the scene?

MS. GALBRAITH MOORE: Objection, form of the question.

A I -- I think that your client made it unsafe for any number of Troopers being there.

Q (By Mr. Wilson) Can you answer my question?

A I believe I did answer your question. The situa -- it depends on the situation. In this particular situation I don't know that we had enough Troopers to handle your client. It's scenario based.

Q But -- and .....

A I answered your question, it's scenario based. It -- I

[p.82]

can't .....

Q No, my .....

A ..... I can't give you a blanket answer on that.

Q This is the scenario. Okay.

A What's a .....

Q I'm asking you about this scenario. I understand that, ...

A Yes.

Q ..... you understand that.

A My Trooper was not safe with your client one on one in that scenario.

Q Okay.

A And that is why I responded.

Q I understand that's your opinion.

A No, that's a fact .....

Q My .....

A ..... and your client's actions .....

Q ..... but my -- I'm actually asking .....

A ..... confirmed it.

MS. GALBRAITH MOORE: Wait. Wait .....

Q ..... a little different question .....

MS. GALBRAITH MOORE: ..... for a question.

Q ..... than that.

A Uh-huh (affirmative).

Q Okay. My question to you is regardless of what Trooper

[p.83]

Weight's safety was or wasn't at the point you arrive it is a safer situation for Trooper Weight than at the point prior to your arrival?

A That's the hope.

Q And do you have some basis to say that hope was not the reality of the situation?

A No, because your client kept fighting and ho -- luckily we were fit enough to overpower him eventually.

Q Who initiated the physical contact in this case, Mr. Nieves?

A You client initiated when he brought the fight to my Trooper.

Q Who is the first person who made physical contact with the other person in this case?

A Where my -- where my Trooper cleared your client that would -- would be my Trooper defending himself.

Q And do you receive training on -- I mean, is that an official police maneuver is to shove people?

A You make space, yes it is. You make space between -- that way we can access our other tools.

Q Would you agree with me that everybody at this party was standing a little bit closer to each other than would be normal without the music playing in the background?

MS. GALBRAITH MOORE: Objection, foundation.

A Not everyone at this party was yelling and screaming at

* * *

Exhibit H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT FAIRBANKS**

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
vs.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF JERRY SADLER, II
August 10, 2015

APPEARANCES:

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* * * *

* * *

[p.9]

A Standing above the doorway.

Q Okay. Now, you said you watched this video that got played by Channel 2 News, right?

A Yes.

Q Is that you standing in the doorway the trooper is talking to?

A Yes.

Q It is you.

A Mm-hmm.

Q Is there any doubt about it's you?

A Nope. I had full interaction with the cops -- or with -- what was the name of the --

Q Trooper Nieves.

A Trooper Nieves. I was in contact with Nieves for maybe two minutes standing in the doorway of my

RV, him standing directly outside of the door of the RV, and a camera directly behind him. So I don't know if I saw the -- I think I -- I believe I was standing on the other side of the party when the troopers approached the RV door. And I kind of looked over there and I was, like, oh, okay. I should probably go -- go speak with them. You know, I am the owner of the RV. So I went -- and I don't -- this is two years ago.

Q Yeah.

A But most of my conversation with him was in the doorway --

[p.10]

Q Okay.

A -- which was pretty short. It was just, you know, a -- was very nice. And, you know, just let me know that he had noticed a minor at the -- at my party and that I should -- that he would like me to put my alcoholic beverage keg inside. And so we immediately pulled that inside. You know, he thanked for my cooperation, and we thanked him for being there and, you know, supplying he that -- that -- you know, that slight hand of law of, you know, coming in and -- you know, obviously, I don't believe there was a moment where that juvenile was standing there drinking from it and he approached and saw that; but, of course, his concerns became my concerns and, yes, I put the keg inside. And, actually, no problem; I'll hide that in there. But, yeah, I thanked him. And he walked back off with the camera, and they continued to -- what was it called, crowd control?

Q Sure.

A Crowd control in, like, a half moon of troopers for about another 45 minutes to an hour.

Q Okay. Let me ask you a question now. So when the trooper is talking to you, do you hear anybody who was hollering at you and/or the trooper?

A No. No. I mean, at least not -- like, I'm standing in an RV. There's music in the background. I hear him speaking

[p.11]

to me. If someone was yelling to a certain degree off to the side of him, you know, I don't – I don't remember that. But he never, like, lost his attention with our conversation and looked elsewhere.

Q So there was nothing -- while the trooper is talking with you, there's nothing that distracted the trooper in any way, like, where he looked off to the side or anything like that. He stayed focused on you; is that correct?

A Yes.

Q And you did not hear anybody hollering or screaming and saying that you didn't have to talk to the trooper?

A No. But, like, that -- that background -- like, someone saying that in the background would be so -- you know, like, I don't think it would have caught my attention, you know.

Q Okay.

A I thought, you know, generally, any time there's an interaction with law enforcement, there's someone mumbling off to the side, you don't have to -- you know, that someone that knows -- think they know the law –

Q The law –

A -- and then –

Q Sure. And all we can ask you about is what you heard or didn't hear.

A Yeah.

[p.12]

Q Okay. So you didn't hear any such thing of anybody hollering in the background, correct?

A Not to the degree to where it distracted our conversation.

Q Okay. And, in fact, did the trooper ever come into your RV?

A No.

Q At any time, did he come in the RV?

A No.

Q Okay. Do you remember anybody saying -- hollering that the trooper could not come in your RV? Do you remember anybody shouting that – saying, hey, he can't come in the RV, or anything like that? Again, what you can tell us. I mean, all you know is what you heard.

A No. You know, I definitely -- I can't say -- it's very vague, but no. I don't think I would have let him come in regardless. And he had no reason to.

Q Okay. And, in fact, you said you listened to the audio, correct? You've watched the video, and there's audio on the video you listened to?

A Mm-hmm.

Q Did you hear anywhere on the audio or the video -- I guess the audio portion of it -- anybody hollering in the background?

A Not exactly. But -- no.

Q Okay.

* * *

Exhibit I

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT FAIRBANKS

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

AFFIDAVIT OF SIERRA CONTENTO

STATE OF ALASKA	)
	) ss
FOURTH JUDICIAL DISTRICT	)

I, Sierra Contento, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen years and am a resident of the Fourth Judicial District in the state of Alaska.

2. On April 13, 2014, I was attending the Arctic Man event in the Hoo Doo Mountains, specifically a lawful gathering in the parking lot of said event.

3. Sometime during the evening, Alaska State Troopers came to our parked motor home and asked us to put our keg of beer inside the motor home. I was the one who opened the door to speak to them. While we spoke, I was standing in the doorway of the motor home. There were clothes and things scattered all over the inside of the motor home, so there was no room for anyone to really enter the motor home. At best, the trooper stood on the second to the bottom outside stairs of the motor home. He never walked around inside the motor home or searched anything inside the motor home but he may have stuck his head in.

4. I did not hear Russ Bartlett shout at anyone from our motor home that we did not have to speak with the troopers or allow them in the motor home.

DATED this 10 day of February 2016.

/s/Sierra Contento
Sierra Contento

SUBSCRIBED AND SWORN to before me this 10 day of February 2016.

[SEAL] /s/Niki Lightly
Notary Public in and for Alaska
My Commission Expires: April 13/18

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Exhibit K

In The Matter Of:
RUSSELL BARTLETT v.
LUIS NIEVES, et al.,

BRICE WEIGHT
July 31, 2015

Metro Court Reporting
405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
metro@gci.net

* * *

[p.25]

they provided breath samples. They confirmed they had alcohol on their breath. There was a third individual that was contacted, I couldn't tell you the exact location within that little area but that individual had been drinking as well, another teenager. And so, Trooper Minor -- we were kind of getting backed up on paper -- Trooper Minor got into his patrol vehicle, parked of course, and got on his laptop inside the patrol vehicle and started issuing minor consuming alcohol citations. I continued to walk around the party area and look for other minors who had been con -- drinking alcohol.

Q And what happened?

A I contacted another teenager, he was very nice, he was very compliant. We were kind of in an area

where it was loud so I asked him to move off to the side with me so where I could kind of get him away from everyone else because there was a strong smell of alcohol right in that party area where there was more people. We moved off to the side. He was again, compliant. We were able to have a conversation and that's when Mr. Bartlett approached.

Q Okay. Let me back up here and ask you a couple of questions. In general in the area of this party would you agree with me that the noise was quite loud?

A If you were over by the RV or fire area it was loud.

Q Okay. Now, let's talk about specifically the area that

* * *

[p.35]

Q Sure. So, less than one minute. Can you give me a – it was at least a certain amount of time?

A It would – definitely it was not immediate. I'd say at least 30 to 45 seconds.

A Okay. And then what is the first part of the conversation that Mr. Bartlett participates in from your standpoint?

Q When Mr. Bartlett approached he was visibly angry, you could tell the way he was talking to me he was angry. The harshness in his voice and again, I can't tell you the exact words that he was saying but it was you have no right to be here, get out of here, you can not talk to this -- this kid. I tried to

explain to him who I was, what I was doing, and it was almost impossible for me to get a word out. He was talking over me, interrupting me, not letting me say anything verbally really. He was very adamant and it was obvious to me it didn't matter what I had to say. I could -- there's not anything I could possibly say or have said in that situation to get him to leave or exit the situation. There was nothing verbally I could have done, it was obvious to me.

Q Okay. So, and I understand you -- you're not giving us quotes but you conveyed the concept that Mr. Bartlett says you have no right to be here, he wants you to get out of here, you can not talk to this kid. You then

[p.36]

tried to explain your position on those issues with Mr. Bartlett and then what's the next -- what else happens in this conversation?

A He gets more ramped up as it goes on because I am not doing as he's basically commanding me to do. I'm not doing what he's telling me to do and he escalates his voice, his hand gestures, his overall demeanor becomes more hostile because I'm not complying.

Q So, from the time he arrives until the time you shove him is it a continuing escalating behavior on behalf of Mr. Bartlett, that what you're describing to me?

A Yes.

Q Okay. And so then I want to make sure I have any other conversations you had with Mr. Bartlett before you shoved Mr. Bartlett that you can recall?

A I tried to talk to him, I tried to explain what I was doing, it was not working. I was beginning to feel threatened and felt threatened for my own safety and the safety of other people in the area.

Q And what was it that Mr. Bartlett did that made you feel threatened?

A Well, he decreased the distance between myself and him, he absolutely put himself between me and the teenager that I had been talking to. The look on.....

Q Well, let .....

[p.37]

A ..... look on his .....

Q ..... let me -- let me interrupt you there. I don't mean to (indiscernible - fast speaking). What about him putting himself between you and the teenager made you feel threatened? Why does that make you feel threatened?

A Because -- and I want to get this right but -- by him putting himself between me and that person that could be considered he doesn't want to miss and accidently hit that person or if he's going to become assaultive he wants to kind of move that person out of the way, I guess you could say type of a deal.

Q Was that person ever in the way?

A Me and the teenager were talking and then he got in between us.

Q But was the teenager ever between you and Mr. Bartlett?

A Well, I think – well, Mr. Bartlett wasn't there when I was talking to the teenager initially. So, I would say as soon as Mr. Bartlett approached he interjected himself between us.

Q Okay. Fair enough.

A Yeah.

Q My question is, was there ever any point in time where the teenager was between you and Mr. Bartlett?

A I don't recall.

Q Can't say yes, can't say no?

* * *

[p.54]

face is very close to you, you took that to be combative in nature and therefore you pushed him away?

MS. GALBRAITH MOORE: Your question?

Q Am I reading that – am I understanding .....

MS. GALBRAITH MOORE: Objection, ...

Q ..... that correctly?

MS. GALBRAITH MOORE: ..... asked and answered.

A Yeah. You're -- you're reading it correctly but he also had his hands in my face.

Q (By Mr. Wilson) You say – okay. So, you're missing that part. All right. But you certainly -- is it your recollection that the hands, him almost touching you, his face was very close to you, you took those as combative and that was the final straw, you decided to shove him?

A It was everything up to that point. He was very angry and he was very hostile, I thought I was about to get assaulted.

Q And then you say I sh – pushed him away from me. Then you say, quotes: Russell came at me again.

A That was my recollection at the time I wrote the report.

Q And do you believe that's an accurate recollection?

A Having viewed the video I don't think it's 100 percent accurate.

Q Well, what .....

A I think it could have been at the time that's what I felt

[p.55]

but yeah.

Q Well, what percent accurate is it? You say it's something less than 100 percent, is it .....

A I've seen the video currently.

Q So have I.

A On the video it looks like I push him back and Sergeant Nieves grabs his hand at that point. When

I wrote the report my recollection was that he was turning to come back at me .....

Q Okay.

A ..... after I pushed him.

Q So, it would be 100 percent inaccurate Russell came at me again?

MS. GALBRAITH MOORE: Objection, form of the question.

A And – and again, at the time I wrote the report that's what I remembered. I don't have a video or I didn't have a video at the time that I could watch on the screen and go okay, so this happened, that happened. You understand?

Q (By Mr. Wilson) Sure. Let me come back to that but make sure I understand. As we sit here today you would agree with me that it is 100 percent inaccurate that Russell came at you again?

MS. GALBRAITH MOORE: Objection, form of the

[p.56]

question.

A I would disagree with you.

Q (By Mr. Wilson) Okay. And what part of that statement do you disagree with?

A That .....

Q We asked about what you know today, okay, what your belief is .....

A Uh-huh (affirmative).

Q ..... today, you tell me what's wrong with what I just said to you?

A And again, you're watching a two dimensional video of course, going off of that but without Sergeant Nieves grabbing his hands he was coming back at me. And I can't tell you what was going to happen because it didn't happen but it's my belief and it was my belief at the time if Sergeant Nieves hadn't grabbed his hand he was coming back for me.

Q But that's not what you said in your police report, right, you said he did it, he came back at you?

A That's what I wrote because that's what I recalled it at the time.

Q Now, you said you didn't have a video available to look at, right, that's your statement, correct?

A Correct.

Q In fact, what you could have done was you could have went

[p.57]

and asked the video guy who was there and say hey, can I look at your video?

A I -- I would disagree with that.

Q You couldn't have done that, it would have been impossible for you to do that?

A When I writing my report the video guy was not there that I recall.

Q Did you even look for him?

A I believe it was like 5:00 in the morning or 4:00 in the morning or whatever time in the morning it was and I was writing the report and they had gone home probably a couple hours -- or not home but they had gone back to where they were camping at, you know, ...

Q But .....

A ..... before that.

Q You were all at Arctic Man, right? I mean, the whole Arctic Man is what, a mile wide?

A I had no idea where they were staying. I had no idea what their names were, I had no idea what their phone numbers were.

Q You could have asked Sergeant Nieves that, correct?

A I could have asked Sergeant Nieves. I don't know if he had that information.

Q Having reviewed the video is it still your position that Mr. Bartlett attempted to head butt Sergeant Nieves?

[p.58]

A Well, I think watching the video it's a little -- even watching the video I think the timing or the -- not the timing, the chronological order of which that's put into the report isn't quite accurate. However, and again, this is watching the video I think there is a portion on the video where based off of where I was standing that I could have reasonably inferred that a head butt had been attempted.

Q Let me go back and ask you this. And be care – pay attention to what I'm asking you very specifically if you would please. At the point that Sergeant Nieves arrives to the point that Mr. Bartlett is on the ground and seconds away from being cuffed is there any of that video that is missing in your view, I mean, has it been edited in some way?

A I don't know what kind of editing they did.

Q No, that's not my question. My question to you, as you look at that between those two points, do you look at that and say ah-hah we're missing something here, they edited something out?

A Such as they took something out or added something in?

Q Correct.

A I – I don't believe so.

Q Do you believe that – that the – at – the point that's allegedly Mr. Bus – Russ – Mr. Bartlett attempts to

[p.59]

head butt Sergeant Nieves that point is on this video?

A I think it could reasonably be inferred from where I was standing relative to Sergeant Nieves and Mr. Bartlett that I could have reasonably believed he was being head butted or attempting.

Q You agree with me that Mr. Bartlett put his arms behind his back voluntarily, I mean, he – it was an action he took not an action you took for him?

A Eventually, yes.

Q Is there some point in this video that you believe shows that Mr. Bartlett took a swing with his right hand at Trooper Weight -- Trooper -- excuse me, Trooper .....

MS. GALBRAITH MOORE: Sergeant.

Q ..... Sergeant .....

MS. GALBRAITH MOORE: Nieves.

Q ..... Nieves.

MR. WILSON: Thank you.

A Did I see something on the video that was like a punch or a swing towards me? I did not see that on the .....

Q Nieves?

A ..... oh, I'm sorry, Sergeant Nieves. I don't recall seeing that on the video.

Q Do you recall seeing that at the time of the event?

A I don't recall.

Q In other words, you simply have no recollection of

[p.60]

whether or not he did or you did not observe any such thing to take place?

A Again, it was very dynamic. He was being given orders, he was not complying with those orders. I don't recall from what my memory if that happened

or not. Watching the video like you have already asked, it does not appear that way.

Q At what point do you realize that it's -- other than perhaps what took place with this video crew there is no audio between any of the Troopers there that really documents the events that took place between Mr. Bartlett and yourself?

A When do I realize that?

Q Yeah.

A Oh, probably when we were driving back to, you know, ...

MS. GALBRAITH MOORE: If you know.

A Yeah. Well --

Q If you remember?

A The -- the exact da -- the exact moment I realize there's no audio? I -- I don't recall.

Q Okay. Without getting down to the exact moment, give me your best estimate of when it became apparent to you that there was no audio of any of the Troopers involved in this documenting of these events?

A I don't know about all the Troopers when it came out

[p.61]

obviously because I -- I didn't know if Sergeant Nieves had audio going but as far as myself, you

know, it probably would have been after the arrest was made.

Q Did the thought ever occur to you to document in your police report that, in fact, this incident had been videotaped?

A No, it didn't.

Q Why not?

A I didn't have access to that video.

Q You didn't have access to it because you elected not to ask for it, right? Was there any other impediment that denied you access to that video other than just simply taking the steps to go ask the video person whether they had the video?

A And .....

MS. GALBRAITH MOORE: Objection, foundation, form.

A ..... and again, after the arrest was made I went back to the command post. Mr. Bartlett went to the holding tent and I don't recall ever seeing them after, you know, the arrest was made.

Q (By Mr. Wilson) I understand that but you certainly understood you were bringing forth charges against Mr. Bartlett related to this event, correct?

A He was being charged, yes.

Q Yeah. And wouldn't it be at that point in time where

[p.62]

you're going to -- you know you're bringing charges against somebody a time for you to reflect on what's all the evidence I can bring to bear relative to these charges?

A I could have seized every single person's cell phone that was there also because they might have videotaped it.

Q And you think that's how speculative it was whether or not this person who was walking around behind Mr. Nieves .....

A I have no idea .....

Q ..... videotaping the events .....

A ..... what they videotaped or didn't videotape at the time.

Q And you elected not to inform yourself as to those -- whether or not there, in fact, was a video?

A And again, I had no idea what they videotaped or didn't videotape.

Q I get that. You've said that twice now.

A I did.

Q That's not the question I asked you is the only problem we have.

A Sure. Ask again I'll -- I'll .....

Q Okay.

A ..... do my best.

Q You elected not to inform yourself to answer the question

[p.63]

as to whether or not it was or wasn't videotaped?

A Didn't really come up.

Q And it certainly wouldn't have escaped your attention would it, Trooper Weight, that if there was video of this incident that video could be a very important piece of evidence documenting what took place?

MS. GALBRAITH MOORE: Objection, form of the question, foundation.

A If I knew 100 percent there was video of the incident could that be important?

Q (By Mr. Wilson) Yeah.

A It could be important, yes.

Q You certainly grasped that at the time you're preparing this report, right? I mean, that's not a concept that you didn't – weren't capable of intellectualizing at that time, right?

A Sure.

MS. GALBRAITH MOORE: Within the next five minutes or so if we – if you need a break or I need a break so whenever you're -- it's good for you.

MR. WILSON: Okay. Why don't we just do it right now.

(Off record)

(Deposition Exhibits 1 and 2 marked off record)

(On record)

* * *

[p.76]

Q Did you talk with Mr. Nieves about Mr. Bartlett in any way before wrote your report?

A I'm assuming we talked about what happened. The only thing I specifically can like definitely remember is I kind of said to him and he kind of said to me like wow, we were really restrained, we really didn't use very much force when we could have used a lot more. I remember that conversation. We felt that we were very restrained given the circumstances. And Sergeant Nieves informed me after the incident that he had had contact with Mr. Bartlett prior to that which was news to me, of course.

Q And when did Sergeant Niev – at what point in time is this, how long after the incident is it that Sergeant Nieves makes this representation to you?

A I – I don't recall. It was after the incident happened.

Q Within 24 hours?

A Oh, yeah. Yeah. I'd say that shift.

Q That shift. Let me show you what's marked as State of Alaska 0235 and State of Alaska 0236. And you – you're welcome to read whatever you want to but I'll tell you what I'm going to discuss with you is on the second page.

A Sure.

(Pause - reviewing documents)

A Okay.

Q Okay. So, am I accurate to state -- and this is kind of

* * *

Exhibit L

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA AT FAIRBANKS

Case No. 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants,	)
	)

AFFIDAVIT OF RUSSELL BARTLETT

STATE OF ALASKA	)
	) ss
FOURTH JUDICIAL DISTRICT	)

I, Russell Bartlett, being first duly sworn upon oath, depose and state as follows:

1. When I approached Weight to express my opinion that MacCoy Walker should not be interviewed without a parent present, I did not attempt to get in between Weight and Walker, nor put my hands between them, but rather stood at a distance from each

of them as seemed appropriate to communicate over the loud music. Weight was closer to MacCoy Walker than I was to Weight.

2. Prior to Weight assaulting me I did not do anything that could have reasonably been construed as threatening to Weight's personal safety. If Weight was uncomfortable with how close we were standing he had plenty of time to ask me to step back before he elected to shove me and jump on me without any warning. Prior to Weight shoving me I did not have any indication that Weight was uncomfortable with my proximity or physically in fear of me.

3. After I expressed my opinion to Weight, he said "no," took a step forward, and shoved me forcefully on the chest with the palms of his hands. My hands rose up in reaction to Weight lunging at me/the shove and the next thing I knew someone was grabbing my left arm. At this time I had no idea that I was going to be accused of committing an unlawful act, as I had not done anything unlawful. I was then repeatedly told to "get back," and then repeatedly told to "get on the ground." I asked what was going on and received no response. I was verbally threatened with a taser, and I went prone on my stomach and voluntarily placed my hands behind my back. I hesitated going to the ground and quickly lying flat on the ground because I did not want to aggravate an earlier back injury and was trying to avoid getting my face shoved into the ground. If I had not controlled my descent to the ground Weight and Nieves would have shoved my face into the ground.

4. At no time during the altercation was I told I was under arrest. I did not understand I was being charged with a crime until I was told so by Neives

much later in the flow of events, as documented on the video. I did not charge at Weight or Nieves, nor did I attempt to throw any punches or to head-butt anyone. At no time did I attempt to harm Weight or Nieves, and the whole incident occurred in a matter of seconds.

5. Although I had a few beers on the night of my arrest, I had eaten dinner that night and was drinking moderately. At no time was I highly intoxicated nor was my speech slurred.

DATED this 15 day of March 2016.

/s/ Russell Bartlett

SUBSCRIBED AND SWORN to before me this 15 day of March 2016.

(SEAL) /s/Alexis R. Doran
Notary Public in and for Alaska
My Commission Expire: 2-14-19

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Exhibit M

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA AT FAIRBANKS

Case No.: 4:15-cv-4 SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
vs.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)
	)

DEPOSITION OF LAWRENCE PISCOYA
February 24, 2016

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

(Via Telephone)

STEPHANIE GALBRAITH MOORE
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(907) 452-8986

* * * *

* * *

[p.5]

a lot of information you could provide, a lot of knowledge about various things, but I'm really trying to get an answer to a specific question. If you could focus on that, I'd appreciate it.

A Sure.

Q I'll try not to talk over you; you try not to talk over me. It makes it a lot easier for the court reporter. Is that fair enough?

A Sure.

Q And then sometimes I ask questions that are confusing, maybe con -- convoluted. You let me know if you don't understand what I'm asking, and I'll be happy to rephrase it.

A I will.

Q Okay? Lieutenant Piscoya, what's your occupation?

A Alaska state trooper.

Q And how long have you been in that -- in that field?

A About 22 and a half years.

Q And what is your current level of -- in that organization?

A Lieutenant with -- with the troopers.

Q And give me just some sense, as a lieutenant, what kind of a -- job duties does that entail?

A The supervision of sergeants who are in -- the sergeants are in charge of various posts or units or shifts. And the -- just about everything, you know, case-wise,

* * *

[p.17]

to a he-said/she-said situation.

A Sure.

Q Setting aside traffic -- you know, like, doing 60 in a 55 kind of stuff, what were the -- if you reflect on the last five years of cases in which you are aware where a criminal charge has been filed, what

percentage of those cases would have audio or video evidence, to your recollection? Give me your best estimate.

A I –

MS. GALBRAITH MOORE: Objection to form of the question. Are you saying audio or video?

MR. WILSON: I'll ask audio to start out with.

Q Just audio. Limit my question to audio, please.

A I don't know. I – I don't know. I've never compared the cases to where there's audio and not audio. I don't know.

Q Never paid any attention to it whatsoever?

A I have. I do pay attention. I mean, I review cases from my sergeants even today, and I – and I review, and I look over their cases, and I – I observe whether there's audio or not.

Q Let me just reflect my experience and see if you agree or disagree with it. I've been doing criminal work here in Fairbanks for 25 years. In my experience, 90 to 95 percent of the cases I'm involved in have audio. Does that seem out of the norm to you in any way?

[p.18]

A Nowadays, with digital recorders, it might be a little bit higher. Back then, not so much. Back – I can't give you a good estimate. I don't know. I mean, I could be wrong. I It could be close; it could be right. I –

Q Mm-hmm. That's fair enough. And I appreciate you just being honest with me about it. Let me try to ask the question another way. When you see a case and there is an audio, a criminal charge and there is an audio, does that stand out to you?

A I'll ask.

Q Get your attention?

A I'll ask. Sometimes when I review cases, they're not quite complete, all right? The trooper's not quite done. And I'll say, hey, was there audio? And then they'll either say yes or no. And then if there -- if there is audio, I'll say, well, I don't see it attached to the incident. Make sure you get it attached.

Q Prior to this particular case with Mr. Bartlett, had any police officer come to you and said, there is something defective about our audio recorders that we're using in 2014?

A On this very case?

Q Prior to this case. I know that that did happen in this case.

A Oh, yes. We have -- we -- this -- it's not a common

[p.19]

occurrence, but it's an occurrence.

Q Okay. And here's my specific question.

A Okay.

Q I'll rephrase it for you. Prior to this particular case with Mr. Bartlett, have you had any police officer

come to you and say, geez, Lieutenant Piscoya, these recorders that we have are defective?

A No. Not -- not to my knowledge. I -- they didn't address it with me. I mean --

Q That's all you can tell us about. Do you carry a recorder?

A I'm now riding the desk, and I'm more reviewing these and going to very few calls. I have a recorder on my desk. I have a -- I used to carry it in my shirt pocket, but I haven't been to a call in a long time, and I'm doing a lot of administrative work. I did when I was responding to calls, and I was expected to respond to calls.

Q And when you responded to calls and you had a tape recorder on it, did you activate your tape recorder?

A Yes. When I had time.

Q So you attended the trooper academy in Sitka?

A Yes.

Q And when did you do that?

A I began in September of 1993.

Q Did they have a -- do they have, or did they have, I

* * *

[p.60]

A I would have asked.

MS. GALBRAITH MOORE: Go ahead.

A I would have -- if -- I would have inferred -- I would have sent messages or something. I would have asked a few questions. And it could very well be in this report, and I -- I don't -- it's quite possible I phoned him. It's been a while now, so -- if this was the only case I'd been working, I probably would remember.

Q Sure. And I'm not trying to put words in your mouth or anything, but I just want to make sure I understand what you do know and what you don't.

A Absolutely.

Q At Arctic Man, do you have a policy of if you -- if a police officer goes into the beer tent, they should be with another officer?

A Yes.

Q And what's the purpose of that policy?

A Safety.

Q And explain the obvious, I guess. Why does it make it more safe? Why does that policy make the officer safer?

A Well, I mean, one could keep an eye on the other and, you know, there's hundreds of people in there that are heavily intoxicated. And, you know, law enforcement is not the most popular people in a bar, right?

Q I've never noticed that.

* * *

[p.62]

Nieves arrives on scene and, shortly thereafter, Officer Weight shoves Mr. Bartlett.

A Yes.

MS. GALBRAITH MOORE: Objection: form, foundation.

Q And going back to the concept we just discussed, isn't it true that Officer Weight would have felt safer whenever he had another officer with him who had just arrived on scene than he did before that officer was on scene there with him?

MS. GALBRAITH MOORE: Objection: form, foundation.

A Sure.

Q The answer is sure?

A Sure.

Q And if Officer Weight has now just received reinforcements that make him feel safer, would you agree with me, Lieutenant Piscoya, that that seems to be a rather unusual time for the officer, then, to exercise the use of force?

A I don't know. I don't -- I wasn't there. I wasn't making the decisions there. I wasn't there.

Q As you reviewed that video -- and we can play it again for you, if you'd like.

A No.

Q We could take a quick break. Is it your opinion that it's simply a coincidence that Officer Weight elects to shove Mr. Bartlett right as Sergeant Nieves and the video camera

[p.63]

arrive?

MS. GALBRAITH MOORE: Objection: form of the question, foundation.

A I don't know whether it's coincidence or not.

Q Are you a believer in coincidences?

MS. GALBRAITH MOORE: Objection: form, foundation.

A A coincidence could occur.

Q They happen.

A They happen.

Q If Officer Weight hadn't felt the use of -- the need to use force prior to Officer Nieves's arrival, can you give me some explanation for why it is he could have reasonably elected to use force after he got -- I mean, as soon as he gets there?

A I can't.

MS. GALBRAITH MOORE: Objection: foundation.

Q And, of course, one other thing an officer can do if an individual is too close to them and they feel uncomfortable is they could step back themselves, right?

A Yes.

Q And you would -- would you agree with me, that'd be a -- if you have time, again, that'd be a practical thing to do to avoid escalating the use of force?

A Sometimes. But sometimes not.

Q And what would be -- if you can, where you would say,

[p.64]

yeah, that seems like a practical thing to do and, no, it doesn't? Where do you draw that line, if you can?

A I can't. I can't give you specific circumstances where that occurs and where it doesn't occur.

Q I'd asked the district attorney this question, and I'll ask you. Are you aware of some crime called interfering with an investigation?

A No.

Q That's because one doesn't exist, right? To your knowledge.

A That's correct, yes.

Q If an individual is interfering with a police investigation such as Mr. Bartlett, from your perspective, I gather -- I mean, that's the allegation, at least in this case: he was interfering with the investigation -- is there some reason why the first appropriate response to that wouldn't be to say, hey, pal, you're interfering with my investigation; I'm going to have to ask you to leave?

A Maybe it did occur. I don't know. I wasn't there and I had –

Q If it didn't occur, would you want to see good reasons for why it didn't before force got used?

A Maybe. But there's – there's the time factor and things happen very quickly. And you make decisions quickly and things happen and develop and deteriorate very quickly.

* * *

[p.66]

cause to arrest.

Q Sure. And there is no law against being intoxicated, right?

A Unless you're in a licensed premise.

Q Right. Or you're an adult – I mean, as long as you're an adult.

A Yeah. Yeah. There's a couple of factors there.

Q And just because you're intoxicated doesn't justify the use of force against you, does it?

A No. That alone, no.

Q And even if you're intoxicated and you're rude, that doesn't justify the use of force against you, does it?

A That alone, no.

Q And going on to paragraph 2 here, (B) (2), it says, an officer will use force only to the extent that is

reasonably necessary in any given situation to accomplish the officer's lawful objectives, correct?

A Yes.

Q And -- and so whenever it says reasonably necessary, that concept kind of gets meshed with the idea of you don't escalate the use of force unless an additional level of force is reasonably necessary under the circumstances, correct?

A Yes.

Q And what this use of force policy suggests in -- in

* * *

Exhibit R

IN THE DISTRICT COURT FOR
THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT GLENALLEN

Case No. 3GL-14-25 CR

[Filed March 15, 2016]

STATE OF ALASKA,	)
	)
Plaintiff,	)
v.	)
	)
RUSSELL PAUL BARTLETT,	)
	)
Defendant.	)
	)

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES
Per AS 18.66.990(3) and (5)
[ ] ALL COUNTS [x] NONE [ ] SPECIFIED BELOW

REQUEST FOR DISCOVERY
PURSUANT TO ALASKA CRIMINAL RULE 16

1. All materials discoverable under Alaska Criminal Rule 16.

2. A list of the witnesses which the prosecution may call at trial with any record of prior criminal convictions.

3. Any information tending to negate the defendant's guilt or reduce the punishment for the offense.

4. Any and all notes or police notebooks made by any or all officers investigating this case.

5. Any tape recordings made during the investigation of this case.

6. A copy of the AJIS for the defendant in this case.

7. Any and all notes or police notebooks made by any officers or other agents of the State investigating the defendant.

8. Any and all written laboratory reports concerning any examination made by any laboratories of any evidence connected with this case.

9. Any and all photographs or videotapes taken of the defendant.

10. Any and all photographs or videotapes taken at the scene of the crime or otherwise relating to this case.

11. Names and addresses of all witnesses having knowledge of the offense that have been interviewed by the District Attorney, his/her investigators, or the

investigating officers, whether subpoenaed by the District Attorney or not in the above-entitled action.

12. Provide the names and addresses of all witnesses, particularly expert witnesses, who will testify at trial regarding any scientific analysis or tests relating to this case.

13. All written statements of the defendant, victim or witnesses, whether signed or unsigned.

14. Any and all documents in possession of the District Attorney's Office regarding criminal convictions of any potential jurors.

DATED this 5 day of May 2014.

COOK SCHUHMANN & GROSECLOSE, INC.

By: /s/Zane D. Wilson
Zane D. Wilson, #9111108

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Custodian: Weight_Bryce

From: Holladay, Sherese M (LAW)
Sent: Thursday, May 29, 2014 1:25 PM
To: Weight, Bryce L (DPS)
Subject: Arctic Man AK14025280 (Bartlett)

Hey, did you guys have audio while at Arctic Man? I have ALL the Arctic man cases now (I cover Glennallen) and its seems like every one from that weekend is missing audio...
Any chance the above case has a CD somewhere?

Sherese Holladay
Victim Witness Paralegal II
District Attorney's Office
515 E. Dahlia St., Suite 150
Palmer, AK 99645

Phone: [redacted]
Fax: (907) 761-5687
Main Line: (907) 761-5648

Custodian: Weight_Bryce

From: Weight, Bryce L (DPS)
Sent: Friday, May 30, 2014 2:43 PM
To: Holladay, Sherese M (LAW)
Subject: RE: Arctic Man AK14025280 (Bartlett)

Sherese,

I double checked and I have no audio for this incident. The issue at arctic man is situations occur very quickly, and often it is not practical or safe to stop everything and begin recording audio. I know I had two arrests at arctic man, and I did have audio from the other arrest. On this particular incident with Mr. Bartlett things escalated very quickly and I did not have the opportunity to start my audio, prior to having to go hands on and effecting the arrest.

TROOPER BRYCE WEIGHT
Alaska State Troopers – Palmer
453 S. Valley Way
Palmer AK 99645
Desk: [redacted]

From: Holladay, Sherese M (LAW)
Sent: Thursday, May 29, 2014 1:25 PM
To: Weight, Bryce L (DPS)
Subject: Arctic Man AK14025280 (Bartlett)

Hey, did you guys have audio while at Arctic Man? I have ALL the Arctic man cases now (I cover Glennallen) and its seems like every one from that weekend is missing audio...
Any chance the above case has a CD somewhere?

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Fax: (907) 761-5687
Main Line: (907) 761-5648

Cook Schuhmann & Groseclose, Inc.

Attorneys at Law
Telephone 907.452.1855 • Facsimile 907.452.8154
• Toll Free 800.550.1855
714 Fourth Avenue, Suite 200 •
Fairbanks, Alaska 99701-4470
www.alaskalaw.com • csg@alaskalaw.com

Barbara L. Schuhmann
Robert B. Groseclose
Jo A. Kuchle
Zane D. Wilson
Craig B. Partyka
Danielle M. Gardner
Mary S. Spiers

July 16, 2014

sender's email address:
zane@alskalaw.com

Via Facsimile

Palmer District Attorney
515 E. Dahlia Avenue, Suite 150
Palmer, AK 99645

Re: State v. Bartlett
Our File No: 5874.01

Dear Mr. Beard:

We understand that there may have been an individual on scene at the time of this incident that took video of the events. Please consider this a formal discovery request for the name, addresses and phone numbers of

any individual who took video of Mr. Bartlett's arrest or the events preceding his arrest.

Your proposed resolution is not acceptable. Mr. Bartlett was assaulted and wrongfully arrested by the troopers involved in this incident.

Thank you for looking into this discovery request.

Sincerely,
COOK SCHUHMANN & GROSECLOSE, INC.

By: /s/Zane D. Wilson
Zane D. Wilson

ZDW/nl
cc: client

Custodian: Weight_ Bryce

From: Holladay, Sherese M (LAW)
Sent: Thursday, July 17, 2014 10:31 AM
To: Weight, Bryce L (DPS); Miner, Joel A (DPS); Nieves, Luis A (DPS)
Subject: AK14025280 (Bartlett) Arctic Man arrest

Hello Sgt and Tprs, with regard to the above case, the defense is insisting there is a video of the contact and arrest. They do not name who, but claim someone, somewhere was videotaping. I know this is a stretch considering what a busy weekend you all must have had, but for the sake of the case, I have to ask, do any of you have any idea if there is a video floating around of the arrest?

Thanks in advance for your time. ☺

Sherese Holladay
Victim Witness Paralegal II
District Attorney's Office
515 E. Dahlia St., Suite 150
Palmer, AK 99645

Phone [redacted]
Fax: (907) 761-5687
Main Line: (907) 761-5648

JA 453

SOA 0453

Custodian: Weight_Bryce

From: Nieves, Luis A (DPS)
Sent: Thursday, July 17, 2014 10:47 AM
To: Holladay, Sherese M (LAW)
Cc: Weight, Bryce L (DPS); Miner, Joel A (DPS)
Subject: Re: AK14025280 (Bartlett) Arctic Man arrest

Channel 2 perhaps. Nothing in our possession or under our control.

Sergeant Luis Nieves
Alaska State Troopers
Recruitment/Background Unit
Toll Free: 877-AKTROOP
Direct: [redacted]
Fax: 907-269-5751
www.alaskastatetrooper.com

Sent from my iPad

On Jul 17, 2014, at 2:31 PM, "Holladay, Sherese M (LAW)" <sherese.holladay@alaska.gov> wrote:

> Hello Sgt and Tprs, with regard to the above case, the defense is insisting there is a video of the contact and arrest. They do not name who, but claim someone, somewhere was videotaping. I know this is a stretch considering what a busy weekend you all must have had, but for the sake of the case, I have to ask, do any of you have any idea if there is a video floating around of the arrest?
>
> Thanks in advance for your time. ☺

Sherese Holladay
Victim Witness Paralegal II
District Attorney's Office
515 E. Dahlia St., Suite 150
Palmer, AK 99645

Phone [redacted]
Fax: (907) 761-5687
Main Line: (907) 761-5648

Document ID: 0.7.1328.5011 ESI0006

Niki L. Lightly

From: Zane Wilson
Sent: Tuesday, August 12, 2014 3:14 PM
To: Beard, Raymond E (LAW)
Cc: Niki L. Lightly
Subject: RE: BARTLETT, Russell (3GL-14-25CR)

Dear Mr. Beard:

I understand the rules, I was simply hoping we could accomplish what needs to be done without the formalities-given that Trooper Weight will be a required witness for the State. I thought my letter made clear that this was as a request that you did not have to honor. We will serve Trooper Weight directly. I see no need for you to quash the subpoena we served on you, I am not making any claim that the service on you is effective for anything.

Are you suggesting that Trooper Weight is lacking access/knowledge to the Trooper policies on the points we have requested? If Trooper Weight is unable to produce and discuss the Trooper policies on these issues I will be happy to get that testimony before the jury and leave it at that.

I will file a motion to compel the discovery we are seeking- per existing case law. That is what it generally takes but I always inquire first as the court prefers that counsel make an effort to resolve these issues before bringing them before the court.

As an FYI, I will be caribou hunting on August 18 (I will have an associate attend in my absence) and moose

hunting form September 5-12. I am not opposed to trying this case as soon as can be scheduled thereafter but it sounds like we have some discovery issues to litigate.

I look forward to meeting you also.

Zane

From: Beard, Raymond E (LAW) [mailto:raymond.beard@alaska.gov]
Sent: Tuesday, August 12, 2014 2:00 PM
To: Zane Wilson
Subject: BARTLETT, Russell (3GL-14-25CR)

Dear Mr. Wilson,

We received in the mail a subpoena for Trooper Weight to appear and produce at the Glennallen courthouse at an unspecified time on August 19, 2014. The District Attorney's Office does not receive service for Alaska State Troopers. Therefore, we are returning that subpoena to you by U.S. Mail. Please note that service of subpoenas in a criminal case is governed by Criminal Rule 17(d).

As a suggestion, you may be able to obtain the policy information you seek directly from the Alaska Department of Public Safety rather through an individual trooper who may not possess such information. I also believe, but I am not sure, that a defendant seeking such production is required to motion the court for a hearing to address the issue. I will therefore ask the court to quash this current subpoena.

You also asked in the letter which accompanied the subpoena whether the State intended to respond to your outstanding discovery request. Discovery in a criminal case is handled in a rather perfunctory manner under Criminal Rule 16 – the State provides the defendant with all required discovery without request. That was performed on May 21, 2014 when the State sent you six pages. Those same six pages were sent to you again on June 17, 2014. We have no physical evidence in our possession.

We asked Trooper Weight if there is any audio. He indicated that there is not. I do not know whether some private person videotaped the incident. I would certainly want to view any such video if it exists, and the State would provide that evidence to you if it were in our possession, but is not. If you are able to locate such a recording, I would greatly appreciate the opportunity to inspect and copy.

I'm planning to be In Glennallen for calendar call on August 18. I look forward to seeing you there.

Sincerely,
Ray Beard

Raymond Beard
Assistant District Attorney
Palmer District Attorney's Office
T (907) 761-5648
F (907) 761-5687

Niki L. Lightly

From: Zane Wilson
Sent: Thursday, October 02, 2014 8:38 AM
To: Russ B
Cc: Niki L. Lightly
Subject: RE: Russell Bartlett..Video of me getting arrested at Arctic Man

Hello Russ:

What I see looks favorable to you. I would like to get the rest of it. Do you have contact information?

Zane

From: Russ B [mailto:colt451911acp@gmail.com]
Sent: Wednesday, October 01, 2014 8:07 PM
To: Zane Wilson
Subject: Russell Bartlett..Video of me getting arrested at Arctic Man

Hi Zane,
Here is a you tube video of me getting arrested at arctic man.

http://youtu.be/PiyXomUflu4?list=UUZuSGyayb9fJZ5MdLCRwhQg

At 1:55 seconds is Sgt Nieves right before he came in contact with me the first time after he got done talking to the people in the motor home and then came up to me and ask too talk to me then at 2:04 is where trooper Weight assaults me and the he and Sgt Nieves take me down then after that is when they but me into the

trooper vehicle. This video is from a John Thain from new station KTVA 11. Sgt Nieves i believe has a mic on him from the new station and there should be alot more footage and audio. I believe they should even have Sgt Nieves and my first encounter. Please let me know what you think.

Thank you
RussBartlett

FW: BARTLETT, Russell (3GL-14-25, AK 14025280) https://webmaila.alaska.gov/owa/?ae=Item&t=IPM.Note&id=RgAAA ... 5/11/2015 9:37 AM

FW: BARTLETT, Russell (3GL-14-25, AK 14025280)
Beard, Raymond E (LAW)
Sent: Friday, May 08, 2015 2:41 PM
To: Galbraith, Stephanie D (LAW)

From: Beard, Raymond E (LAW)
Sent: Monday, December 01, 2014 2:12 PM
To: Nieves, Luis A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

I watched the video clip that is on KTVA's website. I don't like the editing of it. I would like to get the original footage.

From: Nieves, Luis A (DPS)
Sent: Monday, December 01, 2014 1:17 PM
To: Beard, Raymond E (LAW)
Cc: Despain, Timothy J (DPS); Peters, Megan A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

Ray,

The reporter in this case was also the camera man. He was standing next to or near me throughout my entire

contact at this camp site. https://www.youtube.com/watch?v=PiyXomUflu4

I am working on getting contact info from our PIO now.

Let's just issue him a subpoena to appear.

Lu

Sergeant Luis Nieves
Alaska State Troopers
Recruitment/Background Unit
Toll Free: 877-AKTROOP
Fax: 907-269-5751
JOIN THE STATE TROOPERS
Like Us On **facebook**
twitter

From: Beard, Raymond E (LAW)
Sent: Monday, December 01, 2014 1:11 PM
To: Nieves, Luis A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

Thank you. I viewed the video on their website. Do you think we can obtain the uncut footage of the incident, and the contact info of the film crew?

SOA 0411

FW: BARTLETT, Russell (3GL-14-25, AK 14025280) https://webmaila.alaska.gov/owa/?ae=Item&t=IPM.Note&id=RgAAA ... 5/11/2015 9:44 AM

FW: BARTLETT, Russell (3GL-14-25, AK 14025280)
Beard, Raymond E (LAW)
Sent: Friday, May 08, 2015 2:49 PM
To: Galbraith, Stephanie D (LAW)

From: Weight, Bryce L (DPS)
Sent: Friday, December 05, 2014 6:43 PM
To: Beard, Raymond E (LAW); Nieves, Luis A (DPS); Miner, Joel A (DPS)
Subject: RE: BARTLETT, Russell (3GL-14-25, AK 14025280)

Raymond,
That particular juvenile had not been drinking. After Bartlett had been secured in a vehicle, I returned and spoke with the juvenile. He was .000 on a PBT. I don't recall identifying him, as he was not being cited for anything. The juvenile was very polite and respectful. I do remember talking with him and a friend of his. They told me they did not know Bartlett.

Trp. Weight

From: Beard, Raymond E (LAW)
Sent: Friday, December 05, 2014 4:44 PM
To: Weight, Bryce L (DPS); Nieves, Luis A (DPS); Miner, Joel A (DPS)

Subject: BARTLETT, Russell (3GL-14-25, AK 14025280)

Troopers,

I spoke today with Bartlett's attorney, Zane Wilson. He claims that the young man that Trp. Weight was talking to was under Bartlett's watch and that's why Bartlett approached Trp. Weight. Did anyone identify that young man? Was he cited for MCA?

Wilson says that he will bring that young man in to testify. I want to make sure he doesn't slip in some imposter.

That also raises the question of whether Bartlett was allowing this minor to drink or if he was contributing to his delinquency.

I'm also working with the cameraman to see if he can enhance the video.

Thanks,
Ray

Raymond Beard
Assistant District Attorney
Palmer District Attorney's Office
T (907) 761-5648
F (907) 761-5687

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

[Filed March 31, 2016]

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Russell Bartlett opposes Trooper Bryce Weight's and Sgt. Luis Nieves' motion for summary judgment arguing that a jury might agree with Bartlett's wild speculation about the troopers' alleged subjective motivations for arresting him, while conceding the objective historical facts that support summary judgment. But the troopers' law enforcement actions did not violate Bartlett's constitutional rights. And Bartlett makes almost no attempt to show that the

troopers violated clearly established law. When plaintiff does not meet this burden, the defendant is entitled to summary judgment.[1]

In short, by any objective standard, a reasonable officer would have known that Bartlett's proximity to the lone trooper limited Trooper Weight's ability to react to a potential threat. A reasonable officer from Trooper Weight's perspective could believe that probable cause existed to arrest Bartlett for disorderly conduct, harassment, and assault. And a reasonable officer in Sgt. Nieves' shoes, aware of the totality of circumstances, could – and likely would – believe that Bartlett was engaged in harassment, disorderly conduct, or assault. Even if this Court determines that the troopers' judgments were mistaken, Trooper Weight and Sgt. Nieves are still entitled to qualified immunity: In light of clearly established existing law, and given the information they had, a reasonable officer could have believed that probable cause existed to arrest Bartlett, and that it was reasonable to use a single push to move Bartlett back to then use minimal force to safely arrest him. Summary judgment should be granted.

UNDISPUTED FACTS

Other than disagree with the troopers' subjective belief that Bartlett's demeanor was "aggressive" and "hostile," Bartlett does not dispute the 14 material, pre-

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[1] *Reynolds v. County of San Diego*, 84 F.3d 1162, 1167 (9th Cir. 1996). *See also Galvan v. Carothers*, 855 F. Supp. 285, 293 (D. Alaska 1994) (plaintiff's failure to demonstrate that the right allegedly violated was clearly established is itself grounds for entering summary judgment for defendants).

arrest facts listed in defendants' memorandum. To recap, Bartlett does not dispute that he approached Trooper Weight while he was in the midst of an investigation. Bartlett does not dispute that he stopped within arm's reach of the trooper and that he interfered in the investigation. Bartlett's quibble that Bartlett's chest was not almost touching Trooper Weight's does not negate the fact that he was very close to Trooper Weight. Bartlett cannot dispute that a person who is drinking alcohol may be unpredictable or that a person's close proximity reduces the officer's ability to respond to any potential threat that person may pose. Bartlett argues that the loud music gave him carte blanche to close in on Trooper Weight in order to be heard. Not so. The loud music only increases the uncertainty. Indeed, the 15-year-old described Bartlett as being "scary" loud, even implying that conduct alone justified the arrest.[2]

Bartlett does not dispute that as Sgt. Nieves began to leave the party area he saw Bartlett head toward Trooper Weight, who was some distance from Bartlett, although Bartlett had just advised Sgt. Nieves that he did not want to speak with him. Sgt. Nieves then rushed to Trooper Weight to provide assistance. And it remains undisputed that as Sgt. Nieves approached, he heard Trooper Weight order Bartlett back and saw Trooper Weight push Bartlett back. Whether or not Bartlett was "highly" intoxicated adds to the uncertainty and risk. People under the influence "often

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[2] Exc. P, [Tr. 26:9-11].

act in unpredictable, irrational" ways.[3] Bartlett's statements regarding his purported intent and his relationship with the teen are not material and were not known to the troopers.[4]

Focus on what occurred at the RV before Bartlett's arrest is misplaced. The germane facts about that are limited: Sgt. Nieves was investigating minors consuming, while he was directing that a beer keg be moved inside the RV: he had close contact with Bartlett; Bartlett possessed alcohol, and – according to Bartlett – Bartlett did not want to speak with the uniformed trooper – as is his right. Bartlett was not detained or arrested and Sgt. Nieves left the area. Virtually everything else that occurred near the RV door is disputed and not material.[5] Likewise, the post-

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[3] *Luchtel v. Hageman*, 623 F.3d 975, 982 (9th Cir. 2010)(recognizing that a size disparity does not create material fact dispute because people under the influence of mood-altering substances often act unpredictably).

[4] Bartlett had no guardian responsibilities for the teen. Ex. Y, [Tr. 37: 12-14].

[5] If 25 more unreliable narrators said that Bartlett did not yell by the RV, for example, that does not reach a level of genuine dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 248 (1986). The teen testified that that there was "definitely a lot of alcohol" and that drug use at the RV was so prevalent that when the RV door opened it "filled the entire outside with the smell of marijuana." Ex. P, [Tr. 10:4-7]. KTVA reporter, John Thain, left the area of the RV to film other matters such as "the moon," "the D.J.," and the "fireworks." Ex. Q, [Tr. 27:5-17].

arrest disputes are not material insofar as Bartlett argues they support his theories of subjective intent.[6]

ARGUMENT

I. Interference is coercive and a factor in harassment and disorderly conduct.

Bartlett argues that his interference in the investigation is not a crime.[7] The statutes Bartlett cites may apply. But even if they do not apply, AS 11.41.530(a)(4), which criminalizes coercion, does apply. "A person commits the crime of coercion if the person compels another . . . to abstain from conduct in which there is a legal right to engage by means of instilling in the person who is compelled a fear that if the demand is not complied with, the person who makes the demand . . . may . . . cause a public servant to take or withhold action." Bartlett – through his conduct and words – compelled Trooper Weight to abstain from his investigation by instilling in Trooper Weight a fear that if Bartlett's demands were not met, Bartlett would continue to physically impede the investigation and further endanger Trooper Weight and possibly the teen bystander. Thus, a reasonable officer could believe that probable cause existed to charge Bartlett with violation of AS 11.41.530(a)(4).[8]

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[6] Sgt. Nieves never said "bet you wish you would have talked with me." Audio captured the referenced conversation during crowd control. Ex. R. An informal transcript is provided. Ex. S.

[7] Dkt. 57 at 17 – 19.

[8] Cf., *Crumley v. City of St. Paul*, 324 F.3d 1003, 1005 (8th Cir. 2003)(recognizing state court found probable cause existed to

Bartlett misses a key point, however, regarding his interference. It is his burden to show that clearly established law prohibits troopers from considering a person's direct interference in an investigation as a factor in determining probable cause for harassment and disorderly-conduct related charges. Bartlett fails to cite a single case on this. In contrast, the troopers cite several cases, including *Biddle v. Martin*[9], *Locricchio v. Richards*,[10] and *Jackson v. City of Bremerton*,[11] which show that interference is a routine and compelling factor in such charges. Bartlett relegates discussion of the defense cases to footnote 113 of the opposition, incorrectly arguing that this court must only consider the "clearly established laws of Alaska." In doing so, Bartlett ignores that the *Locricchio* court granted qualified immunity for a harassment charge for an individual's interference with an officer's duties in close proximity.[12] *Locricchio's* facts are not only remarkably similar to Bartlett's case, but the germane part of Hawaii's harassment statute is virtually identical to

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charge attorney with obstruction of legal process for interfering with arrest).

[9] 992 F.2d 673, 674 (7th Cir. 1993).

[10] 1996 WL 478703 *3 (C.A. Aug. 22, 1996).

[11] 68 F.3d 646, 652 (9th Cir. 2001).

[12] Bartlett cites several inapposite cases in footnote 137 that involve lethal or near lethal use of force by police. *Young v. County of Los Angeles*, 655 F.3d 1156 (9th Cir. 2011), for example and was not about a false arrest. *Young* addressed whether excessive force was used when a police officer struck a black man with a baton at a traffic stop.

AS 11.61.120(a)(1). Defendants have thus met their burden to show their entitlement to qualified immunity because probable cause existed to arrest Bartlett for harassment; Bartlett abdicates his burden. Dismissal of this case is warranted on this basis alone.[13]

Ignoring the harassment issue, Bartlett relies primarily on the Alaska case *Crawford v. Kemp* to support his argument. Bartlett is mistaken. Instead, *Crawford* compels the grant of qualified immunity here for two key reasons: (1) the *Crawford* court's emphasis on "approach" and "dominance" are consistent with the troopers' cited cases; and (2) the trial court's correct application of federal law resulted in qualified immunity, while the Alaska Supreme Court's incorrect application reversed, resulting in state law that is not clearly established even on *Crawford*-like facts.

Crawford v. Kemp is relevant only in a broad general sense because it addresses Alaska's disorderly conduct statute in the context of a state trooper's contact with an individual seated in the court clerk's office.[14] After the trooper approached Crawford and asked him for information, Crawford became loud and vocal and the trooper feared that Crawford and his cohort would join together. This led to Crawford's arrest for disorderly conduct in violation of AS 11.61.110(a)(1) and (6).[15] Because the court found the

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[13] *Reynolds v. County of San Diego*, 84 F.3d 1162, 1167 (9th Cir. 1996).

[14] *Id.* at 1251.

[15] *Id.* at 1252.

trooper approached Crawford and was in the "physically dominant position," it found fact questions existed regarding whether Crawford was creating a hazardous condition for others under AS 11.61.110(a)(6) and whether Crawford was unreasonably loud under AS 11.61.110(a)(1).[16]

Bartlett ignores that the *Crawford* court failed to analyze the second prong of qualified immunity. Simply put, the *Crawford* decision failed to follow federal law.[17] *Crawford* was decided in 2006 and relies on the state case law that also incorrectly analyzed qualified immunity.[18] In 2008, two years after the *Crawford* decision, the Alaska Supreme Court clarified that its prior qualified immunity analysis lacked an element required by federal law:

> *Saucier* overturned the Ninth Circuit's decision in *Katz*, a decision which *Samaniego* cited twice in its discussion of qualified immunity. What *Katz* denied, and *Saucier* asserted, was that an officer's mistaken but reasonable belief about the legality of his actions could secure that officer qualified immunity. The problem with *Katz* was that it turned the qualified immunity analysis solely into the question of whether the actions of an officer were "objectively reasonable." It did not allow

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[16] *Id.*

[17] *Crawford v. Kemp*, 139 P.3d at 1249.

[18] *Crawford* , 139 P.2d at 1252 n. 2, 1255 n. 8, 1256 (Alaska 2006)(citing *Samaniego v. City of Kodiak*, 2 P.3d 78, 82 – 85 (Alaska 2000).

> the possibility that an officer might act in a way that was objectively reasonable and still be immune from suit because he reasonably but mistakenly believe that his actions were lawful.[19]

In sum, *Crawford v. Kemp* applied Alaska law that relied on the Ninth Circuit's erroneous qualified immunity analysis that was reversed by *Saucier v. Katz*. Under *Saucier v. Katz*, a "further dimension" is required, the point of which is to acknowledge that reasonable mistakes can be made regarding the legal constraints on alleged misconduct.[20] Because *Crawford v. Kemp* failed to apply the core of the federal qualified immunity analysis, *Crawford* is unreliable on the ultimate question of qualified immunity.[21]

The trial court, following federal law, granted qualified immunity to the trooper in the clerk's office consistent with defendants' cited cases.[22] The trooper "transgressed no bright lines."[23] Crawford's level of noise interfered with the work of the clerk's office[24] –

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[19] *Sheldon v. City of Ambler*, 178 P.3d 459, 464 (2008)(*Samaniego* "muddied" the law of qualified immunity and "goes against the holding in *Saucier*.)" *Id.* at 465.

[20] *Saucier v. Katz*, 121 S. Ct. 2151, 2158 (2001).

[21] *Crawford* does not address the conduct under Alaska's harassment statute.

[22] Ex. T.

[23] *Id.* at 16.

[24] *Id.* at 17-18.

like Bartlett's level of noise and conduct interfered with Trooper Weight's work – and the court recognized that not all forms of speech are protected in certain contexts.[25]

In *Crawford*, the trooper feared that Crawford and his cohort might become violent and charged him with disorderly conduct under AS 11.61.110(a)(6). Here, Bartlett approached Trooper Weight and Trooper Weight was never in a dominant position. Bartlett was not seated and he was intoxicated. At a minimum, state law is unsettled on a trooper's entitlement to qualified immunity for a disorderly conduct arrest on *Crawford* like facts and is thus even more unsettled on Bartlett's dissimilar facts. When courts are divided on whether a constitutional right has been violated in a given situation, this signifies that the right is not clearly established.[26] We cannot reasonably expect police officers confronted dangerously close by loud drunk to do better because "we cannot realistically expect that reasonable police officers know more than reasonable judges about the law."[27] Echoing this, the Supreme Court stated that "if judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the

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[25] *Id.* at 20. Sadler's testimony indicates that someone at the party exercised his right to verbally taunt troopers from a safe distance. Sadler assumed that person was Bartlett until Bartlett's counsel corrected him by telling him that person dancing and giving "two middle fingers" was not Bartlett. Ex. U, [Tr. 50:23 – 53:18].

[26] *Wilson v. Layne*, 526 U.S. 603, 618, 119 S. Ct. 1692, 1701 (1999).

[27] *Barts v. Joyner*, 865 F.2d 1187, 1193 (11th Cir. 1989).

controversy."[28] Trooper Weight and Sgt. Nieves are entitled to qualified immunity.

II. Bartlett shows no bright line precluding probable cause for resisting arrest.

To arrest Bartlett, Sgt. Nieves took his left arm, while repeatedly ordering Bartlett to get back and to get down. Based on Bartlett's resistance to the arrest, he was charged with a violation of AS 11.56.700(a)(1). Arguments made in earlier briefing on the resisting arrest issue are incorporated here. The law does not require that a person must be told that he is "under arrest" to satisfy the elements of the statute. Nor would such an express requirement comport with public safety; specific commands such as "put your hands back," "get back," and "get down" give clear directions in a rapidly evolving situation, while a vague statement provides no direction. Troopers' commands to Bartlett combined with taking his arms is a Fourth Amendment seizure that effectively alerted Bartlett that he was under arrest.

When Sgt. Nieves first took Bartlett's left arm, the video shows that Bartlett attempted to yank it from Sgt. Nieves's grasp, while yelling and snarling at Sgt. Nieves. Bartlett's combative stance is depicted in a video frame.[29] As Bartlett actively threatened Sgt. Nieves, Bartlett's right arm was unsecured and

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[28] *Pearson*, 129 S. Ct. at 823; (*see also, Hope v. Pelzer*, 536 U.S. 730, 739 (2002)(finding that where reasonable jurists dispute whether conduct violates the Fourth Amendment, it is difficult to say that a defendant's actions were so clearly contrary to established law).

[29] Dkt. 47-15.

swinging, and the video shows his right hand clenching.[30] A reasonable officer in Sgt. Nieves' shoes could and would fear for his safety. The enhanced video shows Sgt. Nieves defensively move behind Bartlett to avoid being hit. The video shows similar resistance when Trooper Weight took Bartlett's right arm.[31] Thus, Bartlett's arrest swiftly ripened into a situation where Bartlett's resistance throughout posed a threat to both troopers. Bartlett's lack of cooperation, combative stance, his left arm yank, and his swinging right arm parallel the facts in *Fallon* (involving the suspect who pushed away from the vehicle, causing the trooper to believe that Fallon was about to assault him) and *Velarde* (involving a "struggle").[32] Bartlett's sweeping arm and body movements further distinguish his case from *Eide v. State* ("turtling")[33] and *Bultron v. State* (hands held rigid in front).[34] Bartlett cites no case

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[30] Ex. V, [Tr. 130:14-17, 131:4-15, 137:7-18].

[31] Ex. V, [Tr. 137:15-21].

[32] *Fallon v. State*, 221 P.3d 1016, Alaska App. 2010. 353 F.3d 355, 356 (Alaska App. 2015).

[33] 168 P.3d 499 (Alaska App. 2007).

[34] 2011 WL 5627897 (Alaska App. 2004). This unpublished decision was not cited by Bartlett in his motion for summary judgment, nor is it cited in the annotations to AS 11.56.700. Troopers on the scene cannot be expected to carry Westlaw in their pockets. *Bultron* and *Eide* involve convictions and have little relevance to the issue of probable cause. Indeed, *Bultron* recognizes that under the statute "one might say that Bultron engaged in 'bodily impact' when he resisted the officers' efforts to arrest him," further explaining that Alaska's standard for a resisting arrest conviction turns on force directed at the officers. But common sense is part of

involving a suspect who aggressively confronts the arresting officer but the court thereafter construes the remaining struggle as "passive." Absent binding, closely corresponding legal precedent, a court should not find that a right is clearly established.[35]

Qualified immunity also requires that the court give breathing room to officers to make reasonable but mistaken judgments about the law and the facts. If troopers were mistaken that Bartlett was combative and threatening at the outset of the arrest and throughout, that mistake is reasonable. Bartlett approached Trooper Weight to insert himself into the trooper's investigation. Bartlett was loud. And he stood in very close proximity. Sgt. Nieves had just witnessed Trooper Weight defensively push Bartlett back suggesting Bartlett had threatened the trooper. Bartlett's body was turning and he flailed his right arm with a clenched fist, causing the troopers to scramble and thereafter apply significant downward pressure.

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the probable cause analysis and when an officer experiences bodily impact and resisting force, the law does not require that he draw inferences in favor of the suspect. Probable cause to arrest for such conduct is thus wholly compatible with the Fourth Amendment's reasonableness standard – even if the officer is mistaken about the exact force used or the threat posed. This common sense approach is recognized by the Supreme Court: "Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of relevant law. The officer may be reasonably mistaken on either ground. . . . . The Fourth Amendment tolerates reasonable mistakes. *Helen v. North Carolina*, 135 S. Ct. 530, 536, 539 (2014), noting that the distinct qualified immunity inquiry is even more "forgiving" of mistakes. *Id.* at 539.

[35] *Brosseau v. Hogen*, 543 U.S. 194, 199-201, 125 S. Ct. 596, 599-600 (2004).

Ninth Circuit law requires allowance for uncertainties involving people under the influence who may act unpredictably and irrationally.[36] Reasonable officers would necessarily be concerned for their own safety in the close hands-on situation precipitated by Bartlett's conduct.

In sum, Bartlett fails to show a clear bright line that precludes probable cause to charge him for resisting arrest. Moreover, the same conduct supports related charges of disorderly conduct, harassment, and even assault. In a related Alaska case, a prosecutor substituted a disorderly conduct charge for a resisting charge against a female arrested for DUI who swung her arm from troopers during an arrest – conduct very similar to Bartlett's.[37] The troopers here are entitled to qualified immunity.

III. Trooper Weight's single push did not violate the constitution.

Bartlett argues that the enhanced video "establishes" that Trooper Weight's push was "precipitated" by Sgt. Nieves' arrival.[38] Although not apparent on the original KTVA video, the enhanced version shows Trooper Weight's head turns slightly to the right as Sgt. Nieves approaches. Trooper Weight does not recall knowing that Sgt. Nieves was in the

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[36] *See* Note 3, *supra*.

[37] Dkt. 47-14.

[38] Dkt. 57 at 8.

area until Sgt. Nieves took Bartlett's arm.[39] Bartlett lacks foundation to conclude that the video "establishes" what Trooper Weight saw or perceived, particularly given that the teen may have blocked his view and the video shows that Trooper Weight's primary focus was Bartlett. And about the same time, the video shows that Trooper Weight reacted when, as ADA Beard describes it, "Bartlett makes a shift of his shoulder towards Trooper Weight."[40]

Whether Trooper Weight subconsciously recognized Sgt. Nieves was approaching is not material. Bartlett fails to cite even a single case that holds that a police officer's open-palmed push violates the constitution, and, once again, Bartlett fails to address defendants' cases. Indeed, *Portillo v. Montoya* involved two officers against one Bartlett-like threat. The court found that the use of a single push and flashlight strikes to effect the arrest was reasonable under *step one* of the qualified immunity analysis. Here, no strikes occurred and this case is not even a close call. Bartlett's force claim against Trooper Weight for the single push is wholly meritless.

Whether Bartlett's right hand was up toward Trooper Weight before he was moved back is not material to harassment or disorderly conduct charges and Bartlett cites no clearly established law that says

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[39] Ex. W, [Tr. 20:17-21:3].

[40] Ex. V, [Tr. 149:14-17].

otherwise. Moreover, Bartlett is not credible here.[41] Bartlett's right hand was free and within striking distance of Trooper Weight. Bartlett showed no signs of retreat. His head is tilted forward and nothing about his stance demonstrates a casual presence. The video, of course, cannot convey the odor of alcohol, and it does not clearly show Bartlett's eyes and facial expressions. As Assistant District Attorney Beard explains, sufficient probable cause exists for disorderly conduct based on the hazardous condition Bartlett created, without regard to the exact position of Bartlett's right hand.[42]

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[41] The enhanced video shows Bartlett's right hand was up before he was pushed. Ex. X. Frame 35 shows the tip of Bartlett's glove or its reflector, then Bartlett's right hand is seen, while showing virtually no precipitating backward movement of Bartlett's torso, neck or head. The beer in his lowered left hand is consistent with a recent transfer of the beer from his dominant right hand to free it up. Mr. Krack's white coat is visible in the enhanced video off to Trp Weight's left side and shows that Mr. Krack had a clear view of Bartlett's right hand. Krack testified that Bartlett's hand was up, pointing. Trp Weight wrote in his report that Bartlett was "combative" consistent with his April 15, 2014, use-of-force report that states "[Bartlett] put his hands very close to my face, pointing." Krack and Trp Weight do not equivocate on this, but Bartlett does. At his deposition Bartlett said "I don't recall exactly where my right hand was, but it was probably right here on my side." Ex. Y, [Tr. 82:4-5]. After stating he didn't recall, Bartlett requested a break and his counsel spoke to him. Immediately after the break, Bartlett sought to "revisit" his answer and said his "right hand did raise up after the fact" in reference to Trp Weight's push. Ex. Y, [Tr. 83:1-12].

[42] Ex. V, [Tr. 51:18-54:11 and 152:8-23].

Bartlett argues Trooper Weight should have attempted "further communication" with Bartlett, ordered Bartlett to leave, or taken a step back."[43] Again, Bartlett cites no case that requires these alternatives in the context of the minimal force used here, which is not expected to – and did not – cause any injury.[44] Moreover, Trooper Weight found that communicating with Bartlett was futile. Nothing requires an officer to blindly step backwards in a loud alcohol-fueled environment. And a trooper would be remiss to step back and leave a teen bystander exposed to a potential threat. In fact, the entire situation was created by Bartlett's own conduct and culpability.[45]

IV. Bartlett cites no case that precludes the force safely used to arrest him.

To arrest Bartlett the troopers each took an arm and repeatedly instructed Bartlett to get back and to get down. They worked together to accomplish a controlled take down, the goal of which is to quickly gain control of an individual who poses a threat. The goal was accomplished; no one was injured. Defendants cite multiple cases that establish their use of a controlled takedown was well within constitutional bounds. Once again, Bartlett wholly ignores these cases. Instead, Bartlett relies primarily on

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[43] Dkt. 57 at 35.

[44] *See Reed v. Hoy*, 909 F.2d 324, 330-31 (9th Cir. 1990) (no duty to retreat).

[45] *See e.g., Scott v. Harris*, 550 U.S. 372, 384 (2007)(recognizing culpability of defendant in creating situation where innocent bystanders are at risk of being hurt).

Blankenhorn v. City of Orange,[46] which has no application here. In *Blankenhorn*, officers contacted a mall trespasser who alleged that at least three of them "all jumped on [him]."[47] The court refers to this three-officer jump in which the officers violently threw themselves on the suspect as "gang tackle."[48] A video showed the one officer placed a knee behind the suspect's neck and another punched him multiple times in the body and once in the head.

The distinctions between *Blankenhorn* and this case are obvious. Three officers did not "gang tackle" Bartlett without warning; two troopers repeatedly ordered Bartlett to get back and get down and then – using a controlled takedown – took Bartlett gradually to the ground. Multiple punches were thrown in *Blankenhorn*; no one punched Bartlett. An officer placed a knee behind Blakenhorn's neck; although the video shows that Trooper Weight struggled to control Bartlett, he did not use his knee. Nothing in *Blankenhorn* indicated that the suspect was under the influence of drugs or alcohol; Bartlett had been drinking beer all night. *Blankenhorn* is thus neither analogous nor apt. In fact, Ninth Circuit precedent establishes that a controlled takedown is "clearly lawful."[49]

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[46] Dkt. 57 at 33 – 35.

[47] *Blakenhorn v. City of Orange*, 485 F.3d 463, 469 (9th Cir. 2007).

[48] *Id.* at 479 – 80.

[49] *See*, e.g., *Sheridan v. Trickey*, 2010 WL 5812678 (D. Oregon 2010).

Bartlett also ignores controlling Ninth Circuit law that precludes an excessive force claim based on tight handcuffs where the arrestee fails to report discomfort to the arresting officers and summary judgment is appropriate on that claim.

V. Bartlett's malicious prosecution claims also fail in their entirety.

Consistent with his astounding disregard for controlling authority, Bartlett's claims do not meet the elements of a §1983 Fourth Amendment malicious prosecution claim for four key reasons: (1) probable cause is a complete defense, (2) qualified immunity is a complete defense, (3) dismissal of the criminal case for budget reasons is not a favorable termination;[50] and (4) *Karam v. City of Burbank*,[51] forecloses a Fourth Amendment claim because Bartlett was released from Arctic Man on routine bail conditions. Summary judgment should be granted on this claim.

In the context of a §1983 suit against police officers, official conduct violates the substantive component of the Fourteenth Amendment due process clause "only when [it] 'shocks the conscience.'"[52] It is patently

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[50] *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1068 (9th Cir. 2004); *Logan v. Caterpillar*, 246 F.3d 912, 925-926 (7th Cir. 2001)(holding that dismissal by nolle prosequi order does not establish that a criminal prosecution terminated in a way indicative of plaintiff's innocence).

[51] 352 F.3d 1188, 1193 (9th Cir. 2003).

[52] *Tatum v. Moody*, 768 F.3d 806, 820 – 821 (9th Cir. 2014), citing *Gantt v. City of Los Angeles*, 717 F.3d 702 (9th Cir. 2013); *see also, County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998).

obvious that the Fourteenth Amendment does not apply here, particularly where a Fourth Amendment claim is foreclosed. The arrest of Bartlett was routine, the troopers exercised restraint, and no one was injured. The reports are remarkably accurate given how quickly Bartlett's arrest occurred and given the remote Arctic Man location with its limitations and distractions. Bartlett primarily focuses on a few phrases the troopers used in their reports to describe the conduct they perceived during his arrest. In doing so, he ignores well-established law. First, independent probable cause exists even if the disputed descriptions are not considered.[53] Second, *Tatum v. Moody* narrowly construes the due process claims and expressly forecloses a claim here because no lengthy incarceration occurred. The claims in *Tatum* involved highly exculpatory evidence and material "false assertions" in police reports.[54] Third, Ninth Circuit law forecloses a due process claim where, as here, the criminal charges were dismissed.[55]

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[53] Ex. V, [Tr. 51:18-52:21]. *Curtis v. Riley*, 2012 WL 4882318, *8 (W.D. Washington) analyzing a *Devereaux* claim and citing *Tomer v. Gates*, 118 F.2d 1240, 1242 (9th Cir. 1987) (when independent reasons for probable cause exist to support an arrest, "then the most that can be said of the provision of false evidence is that 'it had the potential to but did not, impinge on plaintiffs' constitutionally protected rights.'").

[54] *Tatum*, 768 F. 3d at 809(reports falsely stated that signature robberies stopped after suspect was arrested). Bartlett had equal ability to search the internet for the video and to contact the local news. He contacted Natl. Geographic instead. Dkt. 57-6.

[55] *Pucetti v. Spencer*, 476 Fed. Appx. 658, 660-661(9th Cir. 2011).

Bartlett's attempt to base a claim on *Devereaux* also fails. There is simply no evidence that shows (1) defendants continued their investigation of Bartlett despite the fact they knew or should have known that Bartlett was innocent, or (2) that they used coercive investigation techniques.[56] Defendants did not investigate after Bartlett was arrested (they merely responded to requests from Mr. Beard's office). Neither defendant believed Bartlett was innocent.[57] Nor do ADA Beard or Lt. Piscoya believe that Bartlett is innocent based on their view of the record, including the reports and the KTVA video. Indeed Lt. Piscoya believes that Bartlett's conduct was "aggressive and disorderly."[58] Bartlett does not allege that coercive investigative techniques were used. Bartlett's due process claim is wholly meritless and should be summarily dismissed.

VI. Bartlett fails to rebut the prosecutor's independence.

ADA Beard assumed responsibility for Bartlett's prosecution and the troopers fully cooperated with him and his office.[59] Mr. Beard asserts that he exercised independent judgment and was not pressured or

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[56] *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2011).

[57] *Gausivik v. Perez*, 345 F.3d 813, 817 – 818 (9th Cir. 2003)(holding that even if officer's affidavit for probable cause supporting arrest contained incorrect facts, no evidence existed that officer knew that arrestee was innocent).

[58] Ex. Z, [Tr. 75:23-24, 81:1-3].

[59] Ex. V, [Tr. 178:1-11].

coerced by the troopers.[60] Bartlett's claim that Mr. Beard was not independent because a jury could view the evidence differently based on Bartlett's version of the arrest fails, as a matter of law, to rebut the presumption of independence.[61] Nor has Bartlett established that troopers withheld any material or critical information from Mr. Beard. Mr. Beard reiterated that if budget issues had not prevented it, he would have taken Bartlett's case to trial.[62]

At the outset Mr. Beard reviewed the criminal complaint and Trooper Weight's affidavit, and he likely looked for any past criminal history.[63] He viewed the case as a routine Arctic Man drunk and disorderly conduct case.[64] Mr. Beard believed that paragraph 2 of the complaint justified a charge of disorderly conduct. And he considered the possibility of an additional fear assault charge based on paragraph 3.[65] Mr. Beard's contacts were Troopers Miner and Weight and Sgt. Nieves.[66] Mr. Beard spoke with all of them including Trooper Miner, who confirmed that he was working with Trooper Weight investigating teens possessing

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[60] Ex. V, [Tr. 178:12-22].

[61] *Newman v. County of Orange*, 457 F.3d 991, 995 (9th Cir. 2006).

[62] Ex. V, [Tr. 178:23 – 179:1].

[63] Ex. V, [Tr. 17:5-10].

[64] Ex. V, [Tr. 58:20-25].

[65] Ex. V, [Tr. 53:13-54:11].

[66] Ex. V, [Tr. 178:4-8].

and consuming alcohol.[67] Mr. Beard explained that not all details of the reports are necessarily material.[68] Mr. Beard indicates that he has audio/video evidence in only about half of his cases, and Arctic Man is an event that frequently has no recordings.[69] Mr. Beard tendered an initial offer to Bartlett that included a "charge bargain."[70] Early in the case, after receiving a request from Bartlett's counsel about possible video, the DA's paralegal emailed the three troopers and Trooper Miner and Sgt. Nieves responded that a local television station may have something, both copying Trooper Weight.[71] Mr. Beard was responsible for deciding whether and when to follow up on that information.[72] Mr. Beard explained that Bartlett's case had lower priority because it was on a trial calendar that only

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[67] Ex. V, [Tr. 95:14-96:3].

[68] Ex. V, [Tr. 134:17-24; 153:14-22; 154:22 – 155:20; 156:7 – 157:13].

[69] Ex. V, [Tr. 22:12-17; 42:3-44:9; 20:3-23].

[70] Ex. V, [Tr. 15:17-22].

[71] Ex. V, [Tr. 181]. File may not have all notes. Ex. V, [Tr. 89:20 – 90:23]. ADA Beard not misled by reports that don't reference private video. Ex. V, [Tr. 18:18 – 30:25].

[72] Ex. V, [Tr. 182:14-21]. Efficiency discussed at Ex. V, [Tr. 29:7-14].

comes up every two months.[73] Bartlett sought continuances that took the case well into October.[74]

Mr. Beard found Bartlett's claim that Trooper Weight assaulted him to be surprising and "frivolous."[75] Bartlett pursued his assault theory by filing various motions and submitted an affidavit that said "Trooper Weight assaulted me by shoving me to the ground."[76] The court found nothing in Trooper Weight's personnel file was "remotely" relevant or discoverable,[77] confirming Mr. Beard's initial evaluation. And the court denied Bartlett's request for AST recording policies because they were not relevant to Bartlett's guilt or innocence.[78] As the trial date neared, Mr. Beard likely talked more with the troopers and then obtained the video.[79] Mr. Beard then sought and obtained from

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[73] Ex. V, [Tr. 81:19-23].

[74] Ex. V, [Tr. 82:1-4]. In December, Mr. Beard tried to settle the case anticipating the state's budget problems could restrict travel. The case was dismissed in February because of the budget cuts, which included layoffs and cuts in travel, despite Mr. Beard's direct request to the DA for permission to try the case.

[75] Ex. V, [Tr. 32:5-11].

[76] Ex. AA.

[77] Ex. AB.

[78] Ex. AC.

[79] Bartlett's misplaces focus on the discrepancy between Trooper Weight and David Krack regarding whether, after Bartlett's arrest and during Trooper Weight's administering of a breath test to the teen, Krack denied that he knew Bartlett. This is not material to

KTVA an enhanced version of the video, which repudiates Bartlett's claim that Trooper Weight assaulted him. Beard believes that the video shows that Bartlett's right hand was up and that Trooper Weight moved him back in response to Bartlett moving forward.[80]

Mr. Beard disagrees with Bartlett's arguments that the video shows the troopers' reports were misleading or omitted material information. Mr. Beard interprets Sgt. Nieves' order to get down along with the physical control exerted to be a "continuous advisement" to Bartlett that he was under arrest.[81] Mr. Beard would have used the word "struggling" instead of "fighting" to describe Bartlett's conduct during the arrest, but Mr. Beard believes that the video shows evidence of resisting.[82] Mr. Beard heard Bartlett make "spittle" sounds and "mush mouth," recognizing that the video depicts only a few brief phrases.[83] Mr. Beard agrees that the video does not depict an attempted head butt[84]

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probable cause. The question only highlights that Trooper Weight did not know Bartlett's connection to them *before* Bartlett's arrest. The teen does not recall Trooper Weight asking the question.

[80] Ex. V, [Tr. 145:12-146:11].

[81] Ex. V, [Tr. 136:6-11].

[82] Ex. V, [Tr. 139:19-140:2].

[83] Ex. V, [Tr. 103:4-21].

[84] A head butt can be performed with a forward, rising, sideways or backwards motion; each being effective from different positions. Trooper Weight only says "attempted." https://en.wikipedia.org/wiki/Headbutt

but does not agree that means Trooper Weight's statement is false or material.[85] Mr. Beard believes "grounds for the arrest were established" long before that.[86] Mr. Beard interprets the video to show that during the arrest Trooper Weight lost control of Bartlett's right hand after Bartlett yanked it free, and that Sgt. Nieves saw that.[87]

From the outset, Mr. Beard relied not only on the reports, but also on all three troopers, their credibility, his belief that Bartlett's defense was frivolous, and his own law enforcement experience, which uniquely informed his work. As the case progressed, his initial evaluation was reinforced by the court's orders, the KTVA video, and the enhanced version.[88] Mr. Beard continues to believe that probable cause exists that Bartlett committed the crimes of harassment, disorderly conduct, assault, and resisting arrest. He believes the troopers' conduct was "very appropriate," "very controlled," and that they made a "good arrest."[89] *Newman v. County of Orange* rejected an attempt much like Bartlett's to undermine a prosecutor's

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[85] Ex. V, [Tr. 129:7-17]. If Trooper Weight had removed his hand from the back of Bartlett's neck area while they were near the ground, Bartlett's head could have head-butted one or both troopers. Trooper Weight's entire visual field at that time was occupied by Bartlett's head and upper body.

[86] Ex. V, [Tr. 152:8-18].

[87] Ex. V, [Tr. 137:8-18].

[88] Ex. V, [Tr. 33:7-12].

[89] Ex. V, [Tr. 32:23 – 33:2].

independence based on conflicting accounts, explaining that the discrepancies must be material and the standard also requires determining whether the prosecutor would have pursued the prosecution "not based on *plaintiff's* story, but whether he would do so based on the *officer's*."[90] Thus, when the prosecutor would pursue the charges based on the officers' facts as Mr. Beard's testimony confirms, absolute immunity applies.

CONCLUSION

Bartlett has not met his burden to show the troopers in Bartlett's case violated clearly established law when they arrested him without injury. Bartlett effectively abandons all claims raised in his complaint, emphasizing irrelevant cases and trivial speculation and innuendo. The troopers were doing their jobs and working hard to protect vulnerable Alaskans from the high risks of alcohol. Bartlett, after drinking beer throughout the night, interfered dangerously close to Trooper Weight. Bartlett's conduct spurned a dynamic, unpredictable, rapidly evolving, and potentially dangerous situation. As the teen succinctly put it, Bartlett's conduct was "scary." The decision to arrest Bartlett was consistent with well-established law throughout the country and the force used to arrest and secure Bartlett was restrained and objectively reasonable – no one was hurt. Even if this court were to conclude that the troopers made a mistake as to the facts or the law, any such mistake was reasonable. Bryce Weight and Luis Nieves are excellent troopers;

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[90] *Newman v. County of Orange*, 457 F.3d 991, 995-996 (9th Cir. 1996)(emphasis in original).

they are entitled to qualified immunity and this matter should be dismissed with prejudice.

DATED: March 31, 2016.

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* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

Exhibit S

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

AFFIDAVIT OF MELODY S. MISULICH

STATE OF ALASKA)
) ss.
JUDICIAL DISTRICT)

Melody S. Misulich, being duly sworn, states as follows:

1. I am the Paralegal II assigned to the above-captioned matter and I have personal knowledge of the matters stated in this affidavit.

2. At the request of counsel, Assistant Attorney General Stephanie Galbraith Moore, I prepared an

informal transcript of Sgt. Jason Pugh's audio (SOA 0527-0528).

3. I am familiar with Sgt. Luis Nieves' voice and Russell Bartlett's voice from watching the KTVA Arctic Man video multiple times.

4. I have listened to the audio (SOA 0527-0528) numerous times and have transcribed it to the best of my ability. The six page transcript I prepared is attached hereto.

5. I am not an official court reporter.

/s/Melody S. Misulich
Melody S. Misulich

SUBSCRIBED AND SWORN TO before me this 31st day of March, 2016.

[SEAL] /s/Cassidy White
Notary Public in and for Alaska
My Commission Expires: w/office

Informal Transcript of Jason Pugh Audio

Pt 1 (DM100104.WMA) SOA 0527

[Yelling and cheering]

Unknown 1: Go ahead.

Unknown 2: Got it?

Uknown 1: Go ahead and open it guys.

Bartlett: [garbled speech]

Nieves: I'm the sergeant. Reading your rights. Now you're going to jail.

Bartlett: For what?

Nieves: Harassing my trooper.

[background noise]

Bartlett: I was not harassing.

Nieves: Yea, you were. You could have walked away.

Bartlett: I want your commanding officer here now.

Nieves: I'm it! I'm it! I'm it! I'm it. [Bartlett yelling something, possibly bullshit?] I'm it, you're talking to him now.

Bartlett: What are you fucking talking about?

[background noise and yelling]

Bartlett: You're singling me out.

Nieves: Now you're going to jail. Now you're going to jail.

Bartlett: For what?

Nieves: For challenging my trooper to a fight.

Unknown 3: Miner!

Unknown 4: I think so.

Unknown 5: Because, I gotta wait until they're done talking to me. I'll be, they said I'll be done in a minute and then they'll let me go. But I gotta do community service...

[garbled speech]

Unknown 6: Guys, what's going on?

Unknown 7: I guess we got, I dunno, some minor consuming. I didn't drink anything. Someone like. I didn't drink anything purposely. Someone handed me a red solo cup and said it was red bull and I've been drinking red bull and rock star all day. It happens. I should have, I should have....

Unknown 6: I don't know what's going on.

Unknown 7: Me neither. I really don't. I'm just trying to cooperate.

[garbled speech]

Unknown 8: Daniel!

Bartlett: I did nothing illegal. And I. no I, no. no I did not.

Nieves: Yea you did.

Bartlett: No I did not. [garbled speech]

[coughing]

[loud music and partygoers yelling]

Unknown 10: Race war! Race war!

Bartlett (possibly): Not a threat to him. I was not a threat. Not a threat. I was...

Unknown 9: you are lying.

[garbled speech]

Pt 2 (DM100105.WMA) SOA 0528

Bartlett: No. Bullshit. I did not.

Nieves: You're ridiculous. You're being ridiculous.

Bartlett: Sir, sir.

Nieves: Challenging my trooper to a fight.

Bartlett: No I was not. You are being totally uncompliant. That's not it. That's not what happened.

Nieves: Okay.

Bartlett: That's not. You are falsifying.

Nieves: Okay.

Bartlett: You are falsifying. I was here having a good time with my friend and then...

Nieves: And then you approached the trooper in an aggressive way...

Bartlett: Yes I did approach the trooper but not in an aggressive manner.

Nieves: Yea you did.

Bartlett: That is ridiculous.

Nieves: Yea you did.

Bartlett: No!

Nieves: He told you to leave...

Bartlett: No, he did not.

Nieves: And you wouldn't.

Bartlett: He pushed me. When I walked up and asked what was going on.

Nieves: No no no no no.

Bartlett: No no no.

Nieves: No no.

[Bartlett and Nieves talking over each other]

Bartlett: No, that's what you're saying.

Nieves: Okay. You're done. You're going to jail.

Bartlett: No I'm not done. This is ridiculous. You guys are not here to serve...

[partygoers talking, loud music]

Unknown 1: Race war! Race war!

[multiple people chanting "race war"]

Unknown 2 (possibly Pugh?): What's that?

Unknown 1: Race war.

Unknown 2: Race war? There you are again, man

Unknown 1: Race war! Race war! Race war! [laughing]

Unknown 2: How you doing? How you doing?

Unknown 1: [chanting "race war"]

Unknown 3: What is going on here?

Unknown 2: I just showed up and they had a guy on the ground so. I don't know what's going on.

Unknown 3: All I see is two guys coming...

Unknown 4: Hey how are you guys...

[people talking over each other]

Unknown 5: Thank you they're orange.

Unknown 2: I'm still trying to figure everything out.

Unknown 5: Yea well it happens. You know, it falls off.

Unknown 13: I hope it's not going to hurt.

Unknown 2: You guys having a good time?

Unknown 6: I'm having a great time. Some people are getting out of hand though. So, it happens.

Unknown 2: Just don't be one of those guys.

Unknown 6: Oh no, we're not.

Unknown 7: What one of guys?

Unknown 2: The ones that get out of hand.

Unknown 6: No, we're staying safe. We're having fun.

Unknown 2: That's the important part, staying safe.

Unknown 1: Race war.

Unknown 2: What are you talking about?

Unknown 1: Race war?

[People laughing, someone says "damn it, what the fuck?"]

Unknown 1: I felt the wrong vibe. I felt the wrong vibe.

Unknown 2: That's going to be a pretty small war since everybody here is white.

Unknown 1: You know, I figured it would be a lot easier to ramp up some sympathy. I figured [starts slurring]

[people laughing]

Unknown 7: ...authority...

Unknown 8: Because you don't know what's right and what's wrong.

Unknown 12: I wanna get up there.

Unknown 10: You're gonna get in trouble. I don't know.

Unknown 9 (possibly Sadler): Hey.

Unknown 10: We're not [garbled] so it's not illegal, right?

Unknown 9: Hey, can I talk to you guys for a second, please?

Unknown 11: All right.

Unknown 9: I don't know if you guys are going to be here all night. Is it all the point where you guys are just gonna watch it the whole night, I mean, I don't want any ...

Nieves on radio: Assign it to trooper Weight.

[People talking over each other, cheering in background]

[Garbled speech from dispatcher, at one point she said Bartlett]

Nieves on radio: Yea, 10-4.

Exhibit V

Bartlett v. Nieves
Raymond Beard on 02/23/2016

Pacific Rim Reporting
907-272-4383

* * *

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conveyed to you, how you perceived it. It says, "Russell stepped" -- right at the very bottom of the first page.

"Russell stepped forward to where his chest was almost touching mine and his face very close to mine. I took this action by Russell to be combative in nature. I placed both hands on Russell's chest and pushed him away from me. Russell came at me again."

Okay. I want to talk to you about that statement.

A. Okay.

Q. As you review that statement, does that statement convey to you the idea that what caused Trooper Weight to shove Mr. Bartlett is that Mr. Bartlett stepped forward to where his chest was almost touching Trooper Weight and his face very close to Trooper Weight?

MS. MOORE: Objection; form of the question.

A. I would actually look to the earlier portion of the report. That would be part of what we would be including, but going back, I think you're starting in paragraph three, looking in paragraph two, "As I was

investigating, Russell P. Bartlett," his identification number, "approached me in an aggressive manner. He walked straight towards me and had a look of anger on his face. Russell put his arm between me and the

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juvenile and informed me that I could not speak with the juvenile. He told me I had no business talking with the juvenile and I needed to leave him alone. I attempted to explain to Russell what I was doing and why I was speaking with the 16-year-old, investigating minors consuming alcohol at a party.

"Russell continued to get in between me and the juvenile and continued to be hostile and aggressive. I smelled the strong odor of alcoholic beverage coming from Russell's breath, and Russell was slurring his speech."

That preceded -- and at this point, from that paragraph, was looking as far as the charge that was filed, the disorderly conduct, creating the hazardous situation, that information in and of itself, that second paragraph was what I would be looking to as far as the disorderly conduct of creating the hazardous situation.

And here I see that the officer had articulated specific facts which would give the probable cause for the disorderly conduct charge.

Q. My question is a little different, and I appreciate you giving us a little more background on that, but my question is a little different to you.

My question is: As you read this document and

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you look at what action was taken by Mr. Bartlett that precipitated and what was the final act that allegedly precipitated the shove of Mr. Bartlett?

Isn't it a fair reading of this that the final alleged act is that Mr. Bartlett stepped forward where his chest was almost touching mine, his face very close to mine, and then the trooper took that to be combative in nature so he placed both of his hands on Russell's chest and shoved him away from him?

MS. MOORE: Objection; form.

Q. Is that not a fair reading of that statement, Mr. Beard?

A. No, it's not. In fact, as I had explained, paragraph two is what I was looking at as far as what would justify the arrest for the disorderly conduct creating the hazardous situation. This third paragraph that you're referring to is one where I began looking at saying do we have another offense that occurred, do we now have a fear assault, do we now have -- you know, in that aspect, do we have an attempted assault.

This is the aspect I started looking at: Is there another uncharged crime that did occur, but as far as the disorderly conduct creating the hazardous situation, that is specifically articulated in paragraph two.

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You could read into paragraph three of that being additional information to be able to support that, but even before paragraph three, the officer has

already made out sufficient articulated facts to support the probable cause for the disorderly conduct.

The other aspect of him coming closer, he's very close, very close to mine, the combative nature, that is, you know, additional facts that would support and may be facts that would support another charge. The officer didn't make any other charges to it, so we didn't go any further than that.

Q. Mr. Beard, I'm not asking you what portion of this supports in your view a charge of disorderly conduct.

A. Okay.

Q. So let's -- if we could move on past that, I would appreciate it.

What I'm asking you is whether when you read this statement, this sentence that I have just stated to you now on two occasions, that you read that statement as saying that this is the final step that took place that precipitated Trooper Weight in taking the action of shoving Mr. Bartlett?

MS. MOORE: Objection; form of the question.

A. I would think at least in the way that it's

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citation for it. I think he had his vehicle to where he had the radio contact and the computers and the rest of the things that he would need.

Q. Can I focus you a little more, Mr. Beard?

A. Certainly.

Q. Does Trooper -- did Trooper Miner relay anything to you in terms in his observations that would be relevant to the charges that were filed against Mr. Bartlett?

A. Not that I recall. In fact, I think when I had asked him what did he see, he said he was too far away from it, that his vehicle was down there. So in essence, you know, Trooper Weight was doing the catching, Trooper Miner was doing the cleaning, but he wasn't actively involved in that arrest situation.

Q. Okay. Now, as you -- you said you reviewed this video a number of times, and let me just ask if we can agree on this, that the video establishes that there is very loud music being played at this party, correct?

A. I believe so.

Q. In fact, the video establishes that for people to communicate with each other verbally that they would need to stand closer to each other than a normal distance to effectively communicate, correct?

MS. MOORE: Objection; form.

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(Video playing)

Q. That's it. Did you hear slurred speech anywhere in there, Mr. Beard?

A. I heard a few brief phrases that he was saying or yelling. At one point, it sounded almost spittle coming

out, the mush-mouth kind of, but it's very brief as far as --

Q. Well, why don't you --

MS. MOORE: Let him answer, please.

A. But as far as what we can hear from the video here and what's captured, there are very brief phrases, and I don't know that it would be significant enough for me to be able to determine whether from that two or three words that was slurred, especially with the background of the noise.

We don't have the other audio, so as far as this portion, I don't know that it is showing anything more than I can observe of that. I can hear the yelling. I can hear what sounds like a, what I would describe as mush-mouth, almost the spittle of the words, but at that point, the video is only capturing the back of his head.

I can't see the front, but there are only -- I don't think there is more than two or three words in any of the phrases that I'm hearing, so I don't know that there is enough there to be able to -- for me to

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but was unsuccessful. Sergeant Nieves verbally threatened to use the use of a taser and Russell went prone and placed his arms behind his back."

So we know that the headbutt took place before Russell was prone and his arms behind his back, correct?

MS. MOORE: Objection; form of the question.

A. At least as far as the sequence of the events, yes, then I would agree with that is where it should have occurred.

Does this video show that? No, it doesn't, at least not clearly from the perspective that I can see of the camera. The one aspect I think that you had asked about as far as that being a false question, well, something may be inaccurate, but not designated specifically as false.

And as far as looking at the probable cause of this arrest --

Q. I'm not asking you that question, Mr. Beard. I'm not asking you that. I think we have covered that at least twice now.

So, again, and I'm going to try to be very specific with my question. I want you to point out to me where on the video is it that, quotes, "Bartlett clenched his fist as I grabbed his left arm, shouting no." Do you contend that the video corroborates that

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accusation in the supplemental report of Sergeant Nieves, and, if so, give me the counter number, please.

A. Well, again, I don't contend that the video corroborates any specific fact.

Q. I'm asking you that question here. I'm not asking you whether you did in the past. I'm asking you to right now.

Do you believe, as you sit here and look at this video today, do you believe that this video corroborates Sergeant Nieves' supplemental report where he says, quotes, "Bartlett clenched his right fist as I grabbed his left arm, shouting no"?

(Video playing)

A. I think we just saw a quick second there about 2:08, 2:09 of I was looking specifically at Mr. Bartlett's right hand, and I saw what appeared to be the glove closing going into the clenched fist.

(Video playing)

Q. And you contend he shouted "no"? Does this video confirm that?

A. This video at 2:12, you can see Mr. Bartlett looking directly at Sergeant Nieves. His mouth is completely opened. It likes like he is expressing something. His face is clenched, in what I would think to be a very angry offensive type of a position.

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Trooper Weight is apparently attempting to take control of Mr. Bartlett's right hand and arm at this point.

Q. Mr. Beard, I didn't ask you these questions.

A. You were asking about the clenching of the fist, so I'm trying to go through each of these to look about the clenching of the fist, because here we can see beginning at 2:12, fist is clenched, as best this video can tell.

And there we see even pulling his arm away from Trooper Weight. And I can't see his fist, but I assume that it's a balled fist that's here near, or somewhere in the close proximity of Trooper Weight's groin area.

And, yeah, so there is several instances through here where I can see that Mr. Bartlett is clenching his right fist.

Q. Go back and look at the supplemental report again so that we can get this. The statement is: "Bartlett clenched his right fist as I grabbed his left arm, shouting no."

So these things are alleged to occur, as I read this, in proximity to each other. Did you hear on the video Mr. Bartlett shout "no" at any location?

A. I'm hearing shouting, but I'm not sure that I can distinguish what is being said.

Q. I think if you listen closely you will hear him

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just simply stating in a straightforward manner the fact of the matter is that Sergeant Nieves did not advise Mr. Bartlett he was under arrest?

A. No, I could not say that at all, because –

Q. Okay. That's fair enough.

A. If you ask the question, "Did you hear him say you are under arrest," my answer is no, I did not hear from this audio him say, "You are under arrest."

Q. And this kind of parsing that you have been going through in reference to this rather simple question, is that reflective of your whole approach to how you analyze the evidence in this case?

A. I think it's the approach that we take as attorneys to make a clear distinction, because, as attorneys, we parse words. Words have meaning. And we also have to look at the actions that are doing.

As far as my review of the case, and I think this is where you have got completely off track of, my review of the case is not looking to an officer's specific statements of -- or trying to corroborate each and every individual statement, but is there probable cause for an arrest, am I able to be able to develop this into proof beyond a reasonable doubt at trial? Those are the aspects that I'm looking at. Did the individual --

Q. Those days are long behind us, aren't they? I

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probably count six, seven, eight, nine times, "get down, get down, get down, get down," that is -- I mean, he has got his hands on the person. He is clearly attempting to effect an arrest, and Mr. Bartlett is not complying with those instructions.

I mean, I would say that he informed him repeatedly that he was under arrest. Twice? No, far more. He informed him at every one of those statements: "Get down, get down, get down," and the physical control that he is exerting is a continuous

advisement of "you are under arrest." That's how I would view that portion of the video.

MS. MOORE: Are you going to continue watching the video?

Q. I think so here. I have got a couple left. "I advised him" -- again, on Trooper Nieves: "I advised him again that he was under arrest, as he pulled away from me as he swung his right fist towards me."

What section of the video do you believe either confirms or disputes that particular sentence?

A. The portion I would say that would be from what we're capturing, and, again, looking at -- knowing what the officers are writing in their report, they are writing -- this is a very fluid incident that's happening. The officers are responding to it

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immediately, actions move quickly. How much a person is able to perceive and remember is always something that's in question.

And the officers clearly don't have the benefit of being able to go video by video, frame by frame, seeing what happened. Here we can see, as to your question, when Trooper Weight is trying to control the hand, we're at 2:12. And there at 2:13, we see that it looks like Trooper Weight has lost control of that hand, Mr. Bartlett has yanked it away. It is now floating free.

Here we see Sergeant Nieves looking directly at that. He can see from his position, or at least what the camera is kind of showing to us, is that his view is down towards that area. He can see that Mr. Bartlett's

right hand has come loose, and there is where they are continuing to exert the force, trying to get that hand under control.

Here at this frame, 2:14, we see that Trooper Weight's right hand is back up on the chest. He doesn't have the same grip and control.

Q. Mr. Beard, I need to interrupt you. I apologize. I want you to just relay to me the counter numbers. I don't want your explanation of it. I just want you to give me the counter numbers where you contend this

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Q. 2:06 to? The question is "to fight with us."

A. Probably to about 2:20 seems to be the point where he begins at least allowing -- well, where -- that's where it kind of ended there, the handcuffs, so I can't see what happened after that, if that was the end of it or if there was more action following, but --

Q. As far as what we have here, your contention is from 2:06 to 2:20 of the video demonstrates where Mr. Bartlett is continuing to fight with the troopers, correct?

A. That would be the point that I would think that Sergeant Nieves is referring to.

Q. But my question is a little more specific than that. Is what you see on this video consistent with this sentence, you believe it is an accurate -- the sentence accurately depicts a portion of this video where Mr.

Bartlett is, quotes, unquotes, "fighting with trooper -- the troopers"?

A. I would not choose the word "fighting." That wouldn't be my choice. "Struggling," I would use that. I don't see fists of fury flying or anything of that aspect.

It is more the struggle and the resistance rather than -- and, again, that's where I was parsing out of is what they are describing an assault or merely the

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resisting. And I see that there is evidence of the resisting, not of an assault.

So as far as the word "fighting" that Sergeant Nieves chose to use, I wouldn't have used that word after reviewing this video.

Q. And I'm not asking you whether you would use the word or not. I'm asking you whether or not you believe there is any portion of this video, from your perspective, that demonstrates Mr. Bartlett fighting with the troopers.

A. Fighting, no. Again, with that explanation of had he -- if I saw evidence here of fighting, then there would have been a different charge. That would have been an assault charge or an attempted assault charge, but the aspect if I can understand Sergeant Nieves' use of that word fighting, but I would think another word is more descriptive of what was occurring, struggling, resisting, something in that aspect.

Q. Let me make sure I understand. Here in your affidavit you say, "The enhanced video reveals Bartlett's right hand was raised about chest level and

was near Trooper Weight when Trooper Weight pushed Bartlett away."

And this very well may be the individual clips that you need to go to for this, but here is my question

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else.

MS. MOORE: Any more interruptions and we will take a break because –

BY MR. WILSON:

Q. Go ahead. We'll get through this.

A. So again, here at two seconds, here we see right here. And this is immediately at the point – I mean, we're still at only two seconds, even though I have gone frame by frame by frame, we don't have any further delineation of this, so as far as your question as to which frame, it's still at two seconds.

But immediately when Trooper Weight's hands are making contact with Mr. Bartlett's chest, right there we see his hand is already up.

MS. MOORE: Bartlett's hand?

A. I'm sorry. That is Mr. Bartlett's right hand. You can see the reflector on the sleeve. It is already up immediately at the point where Trooper Weight is doing the shove back of Mr. Bartlett.

So at that point, there is, as we have gone frame by frame by frame, there is no way that from that

contact time this hand, if it was resting down on the right, would suddenly be up and in sight. It could not have happened. This is where, showing that when Trooper Weight was saying, yes, his hand was coming up at me,

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this is where we can see that his hand clearly, although it's behind this juvenile individual, we can't see where that right hand is, but Trooper Weight is responding to that right hand being raised.

He is shoving Mr. Bartlett back, and at that very moment of contact, this is just a few frames of within one second that we're doing it, the hand is already up. So if we were able to move, if it had some technology to be able to move that minor out of the way, you would be able to see clearly Mr. Bartlett's hand is up towards Trooper Weight's face. It's in that area.

Q. In the two-second frame is where you're contending?

A. Yes, it is still within – and which frame by frame, if we could break that down frame by frame.

Q. Let's go to the frames and let's see the first frame where you say you see the –

A. Your frames don't have it. Your frames don't break down, I think –

Q. Let's see if my frames show those at all, and then you can tell me if they are there or not, and tell me which frame it is, if it's there. If it isn't, that's fine.

A. It's not in this. You can't see that portion.

MS. MOORE: It's filmed at 30 frames per

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A. I wouldn't make that contention at all. What I see from here, at least as far as the response --

Q. It's a coincidence or it isn't.

MS. MOORE: Objection; form of the question.

Q. Is it a coincidence that Mr. Weight shoves Mr. Bartlett just right as Trooper Nieves arrives? In your mind, does that have anything to do with Trooper Weight's actions?

A. No, absolutely not. What I see here as far as --

Q. That's all I needed from you.

A. I have got a continuation to that question.

Q. Go ahead.

A. Again, excuse me. My sinuses are still draining.

What I can see from the view of this as to what is prompting Trooper Weight's response is Mr. Bartlett making that shift of his shoulder towards Trooper Weight, and, again, with that hand, you can't see it in the view, but the hand is up and towards -- now, the timing of the events, it looks like Sergeant Nieves; I mean, this is very close in proximity in time.

Sergeant Nieves is making the approach. Just briefly after that, frames after it, Mr. Bartlett has his hand up towards Trooper Weight. And then within just

those few frames, Trooper Weight is doing the shove back. And immediately at the contact again, that's

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thought that Mr. Bartlett was going to punch Trooper Weight, you would expect that to be in the police report, right?

A. If what you're conveying was -- hold on. Let me answer that. Because if it is as you are trying to say it, then I would have expected that to be an assault charge.

What I'm reading here from the force -- excuse me -- about the disorderly conduct creating the hazardous situation, the individual, I mean, he has already clearly created that even before he reached his right hand up towards the trooper. So as far as the probable cause to arrest him for that disorderly conduct, even -- you know, that portion is not the immediacy of the arrest, I don't think so, as far as doing the grounds for the arrest.

The grounds for the arrest were established long before he reached his hand up towards -- and that's where I was looking at saying do we have a fear assault, did the trooper fear that Mr. Bartlett was attempting to assault him with the right hand. And that was one of my lines of inquiry as to, you know, what was the trooper perceiving, was he in fear of assault.

He did not delineate that in his report. He didn't make those charges, so I didn't go with that.

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But as far as the probable cause to effect an arrest for disorderly conduct of creating the hazardous situation, that occurred long before Trooper Weight shoved Mr. Bartlett back.

Q. I understand that's your position, Mr. Beard. I'm trying to ask you a little different question, which is that if in fact Mr. Weight was fearful of Mr. Bartlett striking him with his fist, and that's why he shoved Mr. Bartlett, you would expect to see that in this police report, wouldn't you?

A. If he -- well --

Q. That's a very specific question. I would ask you to answer it either yes or no.

A. I would say that had he charged him with assault or fear assault, then, yes, I would expect that to be in there, because that is the -- that would meet the elements of the offense. He didn't. He only charged with the disorderly conduct, and, therefore, since he is not charging an assault or an attempted assault or a fear assault, then the fact that he didn't include those is not something that is -- what I would consider out of the ordinary.

Q. Even though he elects to include, and both of these gentlemen elect to include "Russell stepped forward where his chest was almost touching mine, his

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face was very close to mine. I took this action by Russell to be combative in nature. I placed both hands on Russell's chest and pushed him away from me."

Now, for whatever reason, they elect to include that in the report, right? Doesn't it strike you as rather odd that they would choose to put these things in there that are relatively at least, less indicative of somebody being assaultive towards them, than someone being fearful of being punched in the face?

MS. MOORE: Objection; form of the question.

A. Would it be odd, that was your, I think your question. No, it's not odd, but if it raises questions, then you have to go to the trooper to say, "Why did you elect to put these facts in and not the others."

Q. Because you kind of wonder, well, geez, why would you put insignificant, less significant material in there and omit more significant material that would make the very same point you're trying to make, but do so more effectively, right?

MS. MOORE: Objection; form of the question.

Q. Go ahead.

A. I'm trying to figure what the question was. Is it odd or unusual? No, it's not. In fact, what I usually -- in reviewing most of the officers' reports that come in, it often surprises me what facts they

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intend to put in the reports and what things they eliminate. That's why we often have to ask for supplemental reports, for additional investigation, tell me what was going on, why didn't you tell me this was happening.

Or we end up, if there is audio, we listen to the audio and find that there is wonderful evidence that's presented in the audio that's not reflected in the officers' reports. So as far as the clarity of the reports, what information they put in, what they don't put in, I would say that pretty much none of that is odd.

In fact, it is often typical and usual. I would want the officer's -- I, for one, would like to teach the officers how to write better reports, how to focus on the elements of the offense and relating to those things and eliminate a lot of the non-relevant, frivolous things that they end up usually putting into the reports. So as far as the oddity of it, no, nothing odd whatsoever.

Q. So it's entirely consistent with your experience that a police officer would be fearful of being punched in the face, they would charge an individual with other crimes, such as disorderly conduct and resisting arrest, and just completely omit any reference to that event

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taking place?

MS. MOORE: Objection; form of the question.

A. I think there is often -- you know, the officers have to make the decision as to what charges that they are going to file, and many of them let a lot of things go.

There is often plenty of evidence of an individual having committed a particular crime and the officers never focus on that whatsoever. That's part of their discretion and how they want to convey. Many of the troopers don't want to ever file charges against an individual for fear assaults or attempted assaults.

Some of them consider it's just part of the job. And they often, as we see with the troopers more often is cut people breaks, charge them with less than they possibly could have, and that's where, you know, I generally have to look to and say, "Did they capture everything that was there."

That's why I had some specific questions for these officers when I saw the evidence, going, why wasn't there any charge for fear assault or attempted assault? Was there not sufficient facts? Because from what I see, we could make out that case. You have elected not to to charge that. Why?

And often it's just that they don't. They don't

[p.157]

charge everybody for what they could, and they give a lot of people breaks, whether it's stopping somebody for speeding at 15 miles an hour and they write them for nine, or they write them for four, simply because they want to give the person a break and have a reduced penalty.

Much of it all just depends. And so in this case of seeing that the officer is not charging it, it's not a surprise whatsoever. And for them to even not reference those things or, you know, not be in something that was – you know, we're able to detect it because we can go frame by frame, second by second on this instant replay.

The officers involved in the situation, they only have their eyes, their perception, their memory to go by, and so, no, it's not surprising whatsoever.

MR. WILSON: Let's take a break.

VIDEOGRAPHER: Going off record. The time is 2:51.

(There was a short break.)

VIDEOGRAPHER: We're back on record. The time is 3:07.

BY MR. WILSON:

Q. Mr. Beard, let me just follow up on some things you said here towards the end -- before our last break.

* * *

Exhibit Y

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. 4:15-cv-00004-SLG

RUSSELL P. BARTLETT,	)
	)
Plaintiff,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Defendants.	)

DEPOSITION OF RUSSELL BARTLETT
July 27, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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CSG, INC.
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(907) 452-1855

FOR THE DEFENDANTS:

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Department of Law

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(907) 269-5190

* * * *

* * *

[p.37]

A He was 16 .....

Q Okay.

A ..... at the time.

COURT REPORTER: I'm sorry?

A He was 16 at the time.

COURT REPORTER: Thank you.

A Not a problem.

Q What high school does he attend?

A I believe it's North Pole High.

Q What -- so what grade will he be in this year?

A I'm not completely sure.

Q Have you ever had any guardian responsibilities for McCoy Walker?

A Guar – no, I have not.

Q When is the last time -- well, let me ask this. Have you seen McCoy Walker since April of 2014?

A Yes.

Q And where did you see him?

A I believe, if I can recall correctly, I've seen -- I -- back when the trial was still going on and it hadn't been dismissed, he wa -- he could not find out -- he had to go to Mr. Wilson's office and he didn't -- couldn't find it, so I offered to take -- bring him down here and show him where it's at. And then af -- that was the first time after that I remember speaking

* * *

[p.82]

down -- down on the si -- on my left side, against my side.

Q And where was your right hand?

A I don't recall exactly where my right hand is, but it was probably right here on my side.

Q Did you raise your right hand toward Trooper Weight's face at any time while you were standing near him?

A No, I did not. Can I get some water, please? Do you mind?

COURT REPORTER: I'm sorry.

A No, no, I mean .....

MS. MOORE: Sure, let's go off record and we'll make sure it -- the other witness may be here.

COURT REPORTER: We're off record. Time is 1:56.

(Off record)

(On record)

COURT REPORTER: We're on record. Time is 2:01.

Q Mr. Bartlett, we're on -- yes?

A I'd like to revisit the last question that you .....

Q Okay. So I just want to -- we took a 10-minute break and you want to revisit a question? What was the last question?

A The question of me -- at any time, did my hand ever raise up when I came in contact with Trooper Weight.

Q And .....

[p.83]

A You said at any -- any time, and I wanted to -- I wanted to rephrase my -- my -- my answer, being that -- being that it -- it did raise up after the fact that he -- after he assaulted me, my hand did come up during that -- that period, when he struck me.

Q Okay. So your version is that he -- why don't you describe what happened.

A After I made that statement to Trooper Bryce Weight and he said, no, and struck me with both palms of his hands in my chest, I went flying backwards. At that time he hit me, my -- my right hand had rose -- rosen [sic] up a little bit.

Q It rose up a little bit?

A Yeah, it rose .....

Q From where?

A From the side -- my side down here .....

Q And did .....

A ..... alongside my hand -- alongside there.

Q And your hand is down by your leg?

A Yeah. Well, it's down by my side, yeah.

Q Why don't you go ahead and stand up and show me where your right hand was when you stopped in front of Trooper Weight.

A Okay. This is how I recall it happening. I had it down, like -- kind of like this.

* * *

Exhibit AA

SOA 0072 - SOA 0073

IN THE DISTRICT COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT GLENNALLEN

Case No. 3GL-14-25 CR

STATE OF ALASKA,	)
	)
Plaintiff,	)
v.	)
	)
RUSSELL PAUL BARTLETT,	)
	)
Defendant.	)
	)

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

DOMESTIC VIOLENCE OFFENSES
Per AS 18.66.990(3) and (5)
[ ] ALL COUNTS [x] NONE [ ] SPECIFIED BELOW

AFFIDAVIT OF RUSSELL P. BARTLETT

STATE OF ALASKA)
) ss
FOURTH JUDICIAL DISTRICT)

I, Russell P. Bartlett, being first duly sworn upon oath, depose and state as follows:

1. I am the defendant in this matter.

2. On April 13, 2014, I did not do anything to create an unreasonable hazard to any individual and did not resist arrest.

3. Without any legitimate cause, Trooper Weight assaulted me by shoving me to the ground.

4. Trooper Weight has fabricated and/or exaggerated the allegations against me to justify his conduct.

5. I believe that the "missing" audio tape may have been destroyed to cover up evidence of the improper behavior of the officer that arrested me.

DATED this 29 day of August 2014.

/s/Russell P. Bartlett
RUSSELL P. BARTLETT

SUBSCRIBED AND SWORN to before me this 29 day of August 2014.

(SEAL) /s/Niki Lightly
Notary Public in and for Alaska
My Commission Expires: April 13/18

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

* * *

IN THE UNITED STATES DISTRICT COURT OF APPEALS FOR THE NINTH CIRCUIT

Case No. 16-35631
D.C. No. 4:15-cv-0004-SLG

[Filed November 3, 2017]

RUSSELL P. BARTLETT,	)
	)
Appellant,	)
	)
v.	)
	)
LUIS A. NIEVES, in his personal capacity and BRYCE L. WEIGHT, in his personal capacity,	)
	)
Appellees,	)

PETITION FOR PANEL REHEARING

Russel P. Bartlett, appellant, through his undersigned attorney, requests that the court rehear this matter on two discrete points. First, there is an inconsistency between this court's analysis of Bartlett's false arrest claim and the district court's treatment of that claim. Second, this court may have misapprehended Alaska law by affirming the district court's treatment of Bartlett's false arrest claim based upon Bartlett's proximity to Trooper Weight and the volume of Bartlett's voice.

I. The District Court never reached some issues decided by this Court.

In analyzing Bartlett's false arrest claim this Court affirmed the district court's reasoning: "Adopting Bartlett's version of the fact, we agree with the district court that defendants had at least arguable probable cause to arrest Bartlett for harassment, disorderly conduct, resisting arrest, or assault under Alaska law." [Doc. 43-1 (Memorandum disposition), at 2] But the district court did not analyze whether arguable probable cause existed to arrest Bartlett for anything other than the crime of harassment under Alaska Statute § 11.61.120(a)(1). The district court noted: "Having found that probable cause existed to arrest Mr. Bartlett for harassment, the Court *does not address* whether probable cause also existed to arrest Mr. Bartlett for disorderly conduct, assault, and/or resisting arrest." [ER 352 & n.72 (emphasis added)]

Mr. Bartlett respectfully submits that this Court overlooked the above portion of the district court's order concerning his false arrest claim. FRAP 40(a)(2) [ER 349-52] This oversight could have a significant impact on Mr. Bartlett's chances of success at trial. Mr. Bartlett requests that this Court grant his petition for rehearing to correct this court's disposition of his false arrest claim.

II. This Court misapprehended Alaska's Harassment Statute.

Based on Bartlett's "loud voice," his proximity to Trooper Weight, and the fact that Trooper Weight pushed Bartlett backwards, this Court affirmed the district court's grant of summary judgment to the

troopers on Bartlett's false arrest claim. The statute at issue, Alaska Statute § 11.61.120(a), makes it a crime to "with intent to harass or annoy another person . . . insult[], taunt[], or challenge[] another person in a manner likely to provoke an immediate violent response."

Here, it cannot be disputed that calmly and non-threateningly "standing close" to someone else at a loud party as depicted on the video, without more, does not rise to the level of harassment under Alaska law.[1] The something more in this case was Barlett's speech. Bartlett told Trooper Weight: "You don't have the authority to talk to [Walker] without a parent or guardian present." [ER 203] But the subsection of Alaska's harassment statute at issue here is "[d]irected principally at preserving the public peace, [and it] will penalize speech only when it falls within the unprotected 'fighting words' category."[2] [*See also* Doc. 7, at 24-28] The words Bartlett spoke to Trooper Weight were not fighting words. Bartlett respectfully submits that the Court may have misapprehended Alaska's harassment statute and requests that it reconsider whether arguable probable cause existed to arrest Bartlett for harassment.

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[1] The need to stand closely to communicate over the loud music was clearly known to Sergeant Nieves due to his presence in the same loud environment.

[2] COMMENTARY ON THE ALASKA REVISED CRIMINAL CODE, Sen. J. Comm., 10th Leg. 2nd Sess. (Jun. 12, 1978) (citing *Chaplinksy v. New Hampshire*, 315 U.S. 568 (1942)).

* * *

DATED this 3rd day of November 2017.

/s/ Zane D. Wilson
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